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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **MAY 06 2015**

[Redacted]

IN RE: Petitioner: [Redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition, finding that as the petitioner was a lawful permanent resident (LPR) of the United States at the time she filed the petition, she was ineligible to be a nonimmigrant.

### *Applicable Law*

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting the criminal activity, as well as to the victims’ qualifying family members. Section 101(a)(15) of the Act defines the term “immigrant” as “every alien except an alien who is within one of the following classes of nonimmigrant aliens.” Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act.

### *Facts and Procedural History*

The petitioner is a citizen of Romania who was granted lawful permanent resident (LPR) status on June 20, 2003 when she was [REDACTED] years old. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on October 4, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The director subsequently denied the Form I-918 petition and also denied the Form I-192 application. In her denial decision, the director cited *Matter of A*, 6 I&N Dec. 651 (BIA 1955), finding that the petitioner could not be granted U nonimmigrant status because she was a lawful permanent resident and could not simultaneously be an immigrant and a nonimmigrant.. The director also indicated that an alien described at section 101(a)(15)(U) of the Act is not included in the definition of “immigrant” at section 101(a)(15) of the Act. The petitioner timely appealed the denial of the Form I-918 petition.

### *Analysis*

We conduct appellate review on a *de novo* basis. Based upon the evidence, and the brief on appeal, the petitioner is ineligible for nonimmigrant classification.

On appeal, the petitioner asserts that the instant case does not involve the same legal issues as *Matter of A*, a case that was decided prior to the U nonimmigration classification. According to the petitioner, the U nonimmigrant classification is available to “aliens,” and Congress did not explicitly exclude LPRs from eligibility for U nonimmigrant status because the U classification was “intended

to apply to noncitizen crime victims generally.” The petitioner, citing the Foreign Affairs Manual (FAM),<sup>1</sup> further states that the director’s assertion that a LPR is ineligible to receive a nonimmigrant visa is inconsistent with guidance in the FAM, which states that that an individual who was issued a visitor’s visa during a stay abroad remains eligible for classification as a returning resident, and that visa applicants in possession of a Permanent Resident Card (Form I-551) are not required to relinquish their Form I-551 as a condition for an immigrant or nonimmigrant visa. The petitioner also claims that U.S. Citizenship and Immigration Service (USCIS) policy indicates that a Form I-918 petition will not be rejected solely because it was filed by a LPR.<sup>2</sup> She contends that she is not requesting “dual immigrant and nonimmigrant status” and her Form I-918 petition does not contravene the definition of “immigrant” under section 101(a)15) of the Act.

The petitioner’s assertion that the U classification was “intended to apply to noncitizen crime victims generally” irrespective of their immigration status is without support. Congress created the U nonimmigrant classification as part of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA 2000), stating the following about its purpose:

Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused *aliens who are not in lawful immigration status*. It also gives law enforcement officials a means to *regularize the status of cooperating individuals during investigations or prosecutions*. . . . (Emphasis added).<sup>3</sup>

There is no language in the legislative history to suggest, as the petitioner does on appeal, that Congress intended to extend eligibility for U classification to lawful permanent residents. To the contrary, section 241(p)(5) of the Act provides that an alien who is eligible for U status may seek any other immigration status or benefit for which he or she is eligible, and USCIS clarified in its preamble to the U nonimmigrant rule that it will only grant one immigrant or nonimmigrant status at a time. *See* 72 Fed. Reg. 53014-53042, 53023 (Sept. 17, 2007). The petitioner cites no statutory or regulatory provision that would permit an LPR to adjust status to that of a U nonimmigrant, or simultaneously hold U nonimmigrant status. The Act allows an alien to change from one nonimmigrant classification to another and permits LPRs to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a LPR to U nonimmigrant status. *See* sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

The petitioner also cites the FAM and notes from a July 2009 USCIS Question and Answer (Q&A) session to support her claim that her lawful permanent residency does not disqualify her from being granted U nonimmigrant status. The section of the FAM noted by the petitioner is inapplicable here

<sup>1</sup> Foreign Affairs Manual at 9 FAM 42.22, N10.

<sup>2</sup> U.S. Citizenship and Immigration Services, Office of Communications, Questions and Answers: Filing T, U, and VAWA Petitions with USCIS (July 8, 2009).

<sup>3</sup> *See* VTVPA 2000, Div. B, Violence Against Women Act of 2000 (VAWA 2000), Title V, Battered Immigrant Women Protection Act (BIWPA), §1513(2)(B), Public Law 106-386 (Oct. 28, 2000).

because it relates to the laws and procedures for returning resident status. The term “reject” in the Q&A notes, which state that USCIS “will not reject a petition” filed by an LPR, relates to the regulation at 8 C.F.R. § 103.2(a)(7), which discusses the rules for the filing of benefit requests with USCIS. USCIS will assign a receipt date to a properly filed U petition submitted by an LPR and will not reject the filing simply based on the U petitioner’s LPR status at the time of filing; however, as discussed herein, a U petitioner’s status as an LPR at the time of filing the petition is a basis for denial of the petition.

The petitioner was granted LPR status on June 20, 2003 and there is no evidence that such status has been terminated. See definition of *lawfully admitted for permanent residence* at 8 C.F.R. § 1.2 (“[s]uch status terminates upon entry of a final administrative order of exclusion, deportation, or removal.”). See also *Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328.<sup>4</sup> Accordingly, the petitioner was a LPR when she filed her Form I-918 petition on October 4, 2013, and is ineligible for nonimmigrant U classification.

### *Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.

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<sup>4</sup> The petitioner’s criminal history indicates that she removable from the United States under section 237(a)(2)(A) of the Act, 8 U.S.C. § 1227(a)(2)(A). As of the date of this decision, however, there is no evidence that she has been placed into removal proceedings.