

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



U.S. Citizenship  
and Immigration  
Services



B15

DATE: **OCT 16 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

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

*Applicable Law*

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

- (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
  - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
  - (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
  - (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
  - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

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Section 101(a)(15) of the Act, 8 U.S.C. § 1101(a)(15), 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.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who adjusted her status to that of a lawful permanent resident (LPR) on January 10, 2001. Removal proceedings were initiated against the petitioner on May 29, 2008. On May 10, 2011, an immigration judge ordered the petitioner removed after finding that she unlawfully obtained her LPR status.

The petitioner filed the instant Form I-918 U petition on March 9, 2011. On May 9, 2011, the

petitioner filed the Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver). On November 15, 2011, the director found that the petitioner did not establish her eligibility for U nonimmigrant status and denied the petition accordingly. In his denial decision, the director cited *Matter of A*, 6 I&N Dec. 651 (BIA 1955) and determined that the petitioner could not be granted U nonimmigrant status because she still held lawful permanent resident status and could not simultaneously be an immigrant and nonimmigrant.

On appeal, counsel submits a brief in which he contends, in part, that the denial of the petitioner's Form I-918 U petition should be reversed because on May 10, 2011, an immigration judge ordered the petitioner removed from the United States.<sup>1</sup> Counsel further asserts that U.S. Citizenship and Immigration Services (USCIS) has stated publicly that a petitioner's LPR is not a basis for denying a petition for U nonimmigrant status.

#### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Although the director was incorrect in stating that the petitioner remained a lawful permanent resident at the time he denied the instant Form I-918 U petition, his ultimate determination regarding the petitioner's ineligibility for U nonimmigrant status was correct.

The petitioner's status as an LPR terminated upon the entry of the final administrative order of removal. 8 C.F.R. § 1.2 (definition of *Lawfully admitted for permanent residence*). *See also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). However, eligibility for relief must be established at the time of filing of a visa petition. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

At the time the instant visa petition was filed, the petitioner was an LPR and, therefore, ineligible for U nonimmigrant status as of the filing date of her petition. The regulation at 8 C.F.R. § 103.2(b)(1) provides: "An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request." The subsequent termination of the petitioner's LPR status, although relevant to any U nonimmigrant petition that the petitioner may submit in the future, occurred after she had filed the instant petition. As noted by the director, 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.

Counsel cites a non-published BIA decision and claims that USCIS has publically stated that it will not deny a U nonimmigrant petition based on a petitioner's LPR status. Counsel, however, misreads the unpublished decision; the term "reject" refers to the USCIS regulations regarding the acceptance

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<sup>1</sup> In his brief, counsel states that the AAO should delay its decision until the Board of Immigration Appeals (BIA) rules on the petitioner's appeal. As the outcome of the petitioner's BIA appeal does not affect the decision regarding the I-918 U petition appeal, the AAO will not delay its decision.

and processing of benefit requests at 8 C.F.R. § 103.2(a), not to a petitioner's eligibility for U nonimmigrant status as described at 8 C.F.R. § 214.14.

*Conclusion*

As the petitioner was a lawful permanent resident of the United States at the time she filed her Form I-918 petition, she is ineligible for U nonimmigrant status based on the instant petition. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition that meets the requirements of sections 101(a)(15)(U) and 214(p)(1) of the Act, as well as the regulations at 8 C.F.R. § 214.14. As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

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