



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 22099808

Date: MAY 31, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U-1 nonimmigrant classification as a victim of qualifying criminal activity under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner is ineligible for U-1 nonimmigrant classification as she is a lawful permanent resident of the United States and that she did not establish that she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and reasserts eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The Act differentiates between immigrants and nonimmigrants. *See* section 101(a)(15) of the Act (providing that every alien is an immigrant except those aliens in specified nonimmigrant classifications, such as U nonimmigrants). Lawful permanent residents are immigrants. *See* section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20) (defining a lawful permanent resident as an individual who has “been lawfully accorded the privilege of residing permanently in the United States *as an immigrant*” (emphasis added)). Because lawful permanent residents are defined at section 101(a)(20) of the Act as immigrants, and the U nonimmigrant classification is excepted from the definition of immigrant at section 101(a)(15) of the Act, it follows that a lawful permanent resident cannot be granted U nonimmigrant status until the individual’s lawful permanent resident status has been lost through termination, rescission, relinquishment, or abandonment. *See Matter of Gunaydin and Kircali*, 18 I&N Dec. 326, 328 n.1 (BIA 1982) (discussing the ways by which lawful permanent resident status may change); *see also* Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007) (highlighting that “U nonimmigrant status [petitioners] are free to seek any other immigration benefit or status for which they are eligible[,]” including immigrant status, but that the agency “will only grant one nonimmigrant or immigrant status at a time”). Only those lawful permanent residents who seek A, E, or G status may adjust to these specific nonimmigrant classifications. *See* section 247 of the Act, 8 U.S.C. § 1257 (limiting the ability of a lawful permanent resident to adjust status to that of a nonimmigrant to only those individuals captured by section 101(a)(15)(A), (E), or (G) of the Act).

## II. ANALYSIS

The Petitioner was admitted to the United States as a lawful permanent resident in February 2003. Following a criminal conviction, the Petitioner was placed in removal proceedings in [redacted] 2012 and an Immigration Judge administratively closed her proceedings in [redacted] 2017.<sup>1</sup> In [redacted] 2013, the Petitioner's home was burglarized. Based on that victimization, she filed the instant U petition in April 2016. In August 2021, the Director denied the U petition. The Director noted that the Petitioner was a lawful permanent resident, an immigrant under section 101(a)(20) of the Act, when she filed the petition. The Director further noted that U status is a nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, and as the Petitioner cannot hold both immigrant and nonimmigrant status at the same time, she was not eligible for U nonimmigrant status.

On appeal, the Petitioner does not dispute that she was a lawful permanent resident when she filed her U petition. Rather, the Petitioner argues that there is no specific regulation for U.S. Citizenship and Immigration Services' (USCIS) position that an individual cannot be a lawful permanent resident on the date of filing a U petition. The Petitioner further contends that USCIS cites no statutory language for its position that the Act defines immigrant by excluding nonimmigrant classes. Lastly, the Petitioner states that if an individual cannot be a lawful permanent resident at the time of filing the U petition, the individual should be given an opportunity to correct this deficiency by submitting a Form I-407, Record of Abandonment of Lawful Permanent Resident Status.

Contrary to the Petitioner's assertions on appeal, lawful permanent residents are defined at section 101(a)(20) of the Act as immigrants. *See* section 101(a)(20) of the Act (defining a lawful permanent resident as an individual who has "been lawfully accorded the privilege of residing permanently in the United States *as an immigrant*" (emphasis added)). The U nonimmigrant classification, however, is excepted from the definition of immigrant at section 101(a)(15) of the Act. *See* section 101(a)(15) of the Act (providing that the "term 'immigrant' means every [individual] *except an [individual] who is within one of the following classes of nonimmigrant[s]* . . ."). Accordingly, it follows that a lawful permanent resident cannot be granted U nonimmigrant status until the individual's lawful permanent residency has been lost through termination, rescission, relinquishment, or abandonment. As stated above, only those lawful permanent residents who seek A, E, or G status may adjust to these specific nonimmigrant classifications.<sup>2</sup> *See* section 247 of the Act (limiting the ability of a lawful permanent resident to adjust status to that of a nonimmigrant to only those individuals captured by section 101(a)(15)(A), (E), or (G) of the Act).

Moreover, the Act provides for an annual numerical limitation on U-1 visas or grants of U-1 nonimmigrant status. Section 214(p)(2) of the Act. USCIS assigns each U petition a priority date, which is the petition's filing date, and a U-1 visa, or U-1 status is allocated by priority date. 8 C.F.R. § 214.14(d)(2). Because lawful permanent residents may not also hold U nonimmigrant status, lawful permanent residency must have terminated prior to the assigned priority date. *See* 8 C.F.R. § 103.2(b)(1) (providing that eligibility for an immigration benefit must be established as of the filing date of a visa petition).

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<sup>1</sup> Administrative closure removes a case from an Immigration Judge's active docket but does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012).

<sup>2</sup> The A, E, and G nonimmigrant classifications are for foreign government officials, treaty traders and investors, and representatives to international organizations, respectively. *See* 8 C.F.R. § 214.2.

In the instant matter, the Petitioner filed her U petition in April 2016. At that time, the Petitioner was a lawful permanent resident and, therefore, she was ineligible for U nonimmigrant status. Regulations expressly require that an applicant or petitioner establish eligibility *at the time of filing* the petition. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katibak*, 14 I&N Dec. 45, 49 (Reg'l Comm. 1971) (stating, in the context of an immigrant petition, "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date under a new set of facts").

### III. CONCLUSION

In summary, the Petitioner is ineligible for U nonimmigrant classification because lawful permanent residents may not simultaneously hold U nonimmigrant status, and the Petitioner was a lawful permanent resident when she filed her U petition in 2016.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>3</sup> Because this basis for denial is dispositive of the Petitioner's appeal, USCIS declines to reach and hereby reserves the Petitioner's appellate arguments regarding the eligibility criteria for U nonimmigrant status. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).