



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

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

In Re: 25251616

Date: APR. 13, 2023

Motion on Administrative Appeal Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U nonimmigrant classification 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that she was ineligible for such status because she was a lawful permanent resident. We dismissed the Petitioner's appeal, concluding as well that the Petitioner was a lawful permanent resident at the time she filed her Form I-918 and was therefore ineligible. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The Petitioner claims that we cited to no specific regulations or authority stating that an individual cannot be a lawful permanent resident on the date of filing a Form I-918. As stated in our previous decision, which we incorporate herein, the Act differentiates between immigrants and nonimmigrants, and a noncitizen cannot be both an immigrant and nonimmigrant at the same time. Sections 101(a)(15), (20) of the Act; *see Matter of C-G-*, 1 I&N Dec. 70 (BIA 1941), *Matter of A-*, 6 I&N Dec. 651, 657 (BIA 1956). A lawful permanent resident is an immigrant. Section 101(a)(20) of the Act. Regulations expressly require that a petitioner establish eligibility for the benefit they seek *at the time of filing* their petition. 8 C.F.R. § 103.2(b)(1). Lawful permanent residence terminates upon the entry of a final administrative order of removal. 8 C.F.R. § 1001.1(p).

The Petitioner was admitted to the United States as a lawful permanent resident in 2003, and while she was placed into removal proceedings in 2012, her lawful permanent residence has not been terminated through entry of a final administrative order of removal. As the Petitioner was an immigrant at the time of filing her Form I-918 in 2016, and she cannot be both an immigrant and nonimmigrant at the same time, she was ineligible for U nonimmigrant classification at the time she filed her Form I-918.

The Petitioner also claims that lawful permanent residents that have admitted allegations and conceded removability before an immigrant judge are situated differently than those defined at section 101(a)(20) of the Act but provides no evidence or legal argument to support this claim.

Finally, while the Petitioner asserts that she should be given an opportunity to submit a Form I-407, Record of Abandonment of Law Permanent Resident Status, such an assertion does not change the fact that she was a lawful permanent resident at the time she filed her Form I-918 and thus ineligible for U nonimmigrant classification.

The Petitioner's motion does not establish our decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision and accordingly must be dismissed.

**ORDER:** The motion to reconsider is dismissed.