U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8303867

Date: AUG. 05, 2020

Appeal of Vermont 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner submits new evidence and a brief asserting her eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *See 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

To establish eligibility for U nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity of which they are the victims. Section 101(a)(15)(U)(i) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any credible, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner was admitted to the United States as a lawful permanent resident in September 1989. In 2002, the Petitioner was the victim of domestic violence by her former partner. Based on that victimization, she filed the instant U petition in April 2018. Following multiple criminal convictions and incarcerations, the Petitioner was placed in removal proceedings in [redacted] 2018 and an Immigration Judge ordered her removed in [redacted] 2018. The Petitioner appealed that decision to the

Board of Immigration Appeals (Board), which dismissed the appeal in [redacted] 2018. The Petitioner then filed a petition for review of the Board's decision with the United States Court of Appeals for the Third Circuit. The Third Circuit granted the Petitioner a stay of removal in [redacted] 2019 and later remanded her case to the Board for further proceedings. In May 2019, while the Petitioner's removal proceedings remained pending, the Director denied her U petition. The Director noted that the Petitioner was a lawful permanent resident, an immigrant under section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), 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. *Id.* The Board dismissed the Petitioner's appeal after remand in December 2019.

On appeal, the Petitioner contends that her status as a lawful permanent resident terminated when she was placed into removal proceedings in [redacted] 2018, and thus she was eligible for U nonimmigrant status upon filing. The Petitioner also argues that she has met the eligibility criteria for and merits a grant of her U petition. The record does not support these claims.

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 (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. Section 247 of the Act, 8 U.S.C. § 1257.

In addition, 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. U.S. Citizenship and Immigration Services (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).

Here, contrary to her claims on appeal, the Petitioner's lawful permanent resident status did not terminate when she was placed into removal proceedings; it would have only terminated upon entry

of a final administrative order of removal.[1] *See* 8 C.F.R. § 1.2 (defining the term lawfully admitted for permanent residence as a status that "terminates upon entry of a final administrative order of exclusion, deportation, or removal"). When she filed her U petition in April 2018, the Petitioner's removal proceedings remained pending and she remained a lawful permanent resident. *Id.*; *see also* 8 C.F.R. § 1241.1 (providing the different circumstances when an order of removal becomes final). Because the Petitioner was a lawful permanent resident when she filed her U petition and lawful permanent residents may not simultaneously hold U nonimmigrant status, the Petitioner is ineligible for U nonimmigrant classification.[2]

ORDER: The appeal is dismissed.

[1] The record does not contain evidence that the Petitioner took any action on the December 2019 Board decision dismissing her appeal and ordering her removal from the United States. If she took no action on that decision, it would serve as a final administrative order of removal in her proceedings.

[2] Since 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).