



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

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DATE: JAN. 12, 2017

FILE #: AXXX XXX XXX
PETITION RECEIPT #: EAC XXXXXXXX
I-2908 RECEIPT #: EAC XXXXXXXX

IN RE: Self-Petitioner: XXXXXXX XXXXXXXX

PETITION: FORM I-918, PETITION FOR U NON IMMIGRANT STATUS

ON BEHALF OF PETITIONER:

REKHA SHARMA-CRAWFORD, ESQUIRE
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Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Please direct any further inquiries to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

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

MATTER OF A-L-

DATE: JAN. 12, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, initially approved the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition). After providing notice to the Petitioner, the Director subsequently revoked the approval concluding that U.S. Immigrations and Customs Enforcement (ICE) reinstated a prior removal order, and therefore, section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(S), barred approval of her U petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that ICE did not reinstate a prior order of removal, and U.S. Citizenship and Immigration Services (USCIS) applied circular reasoning and disregarded regulations, policies, and Congressional intent when determining that she was ineligible for U nonimmigrant status.

Upon *de nova* review, the appeal will be sustained.

I. LAW

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to a petitioner who establishes that he or she has suffered substantial abuse as a result of having been a victim of criminal activity, and possesses information and is helpful to law enforcement concerning the criminal activity which violated the laws of or occurred in the United States.

Regarding an individual who has previously been removed from the United States and subsequently illegally reenters, section 241(a)(5) of the Act, provides:

If the [Secretary of Homeland Security] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is

not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

For a petitioner who is subject to an order of exclusion, deportation, or removal, "the order will be deemed canceled by operation of law as of the date of USCIS' approval of [the U petition]" 8 C.F.R. 214.14(c)(5)(i).

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

II. FACTS AND PROCEDURAL HISTORY

The Petitioner initially entered the United States in or around November 1996 without admission, inspection, or parole by immigration authorities. She was then placed in deportation proceedings and ordered deported on October 14, 1997. The Petitioner was thereafter removed from the United States on November 20, 1999, and subsequently reentered without admission, inspection, or parole. On January 18, 2011, the Petitioner was apprehended by ICE, who reinstated the October 1997 deportation order pursuant to the provisions contained in section 241(a)(5) of the Act.

III. ANALYSIS

The Director revoked approval¹ of the U petition on the basis that section 241(a)(5) of the Act "rendered [her] ineligible for 'any relief' under the immigration laws." On appeal, the Petitioner asserts that ICE did not reinstate the October 1997 order. The Petitioner further asserts that even if she were subject to the provisions in section 241(a)(5) of the Act, the revocation of her U nonimmigrant status was contrary to Congressional intent. Upon *de nova* review, although the record sufficiently demonstrates that ICE reinstated the October 1997 order of deportation, the Director's revocation based solely upon the reinstated order cannot be supported.

The record contains Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated January 18, 2011, with the Petitioner's fingerprint and a notation that she refused to sign the form. Accordingly, the record sufficiently establishes that the October 1997 deportation order was reinstated and that the Petitioner was properly served with the notice.

As we have determined that the reinstatement order was properly served upon the Petitioner, the remaining issue to be determined is what effect the reinstated order had on the U petition. The

¹ USCIS granted the Petitioner U-1 status from November 4, 2011, until November 3, 2015, and simultaneously approved her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

issuance of a reinstated order of removal by ICE does not preclude USCIS from granting U nonimmigrant status. USCIS has exclusive jurisdiction to grant U nonimmigrant status and where USCIS determines the petitioner has met all the eligibility requirements and grants U nonimmigrant status, any prior removal order against the Petitioner is "deemed canceled by operation of law as of the date of USCIS' approval" of the U petition. 8 C.F.R. § 214.14(c)(5)(i).

This regulation is consistent with the fact that petitioners for U nonimmigrant status can seek a waiver, under section 212(d)(14) of the Act, of the underlying inadmissibility ground on which the reinstated order is predicated, section 212(a)(9)(C)(i)(II) of the Act (illegal re-entry after removal). This statutory waiver provision for U petitioners indicates that Congress contemplated USCIS' authority to grant U nonimmigrant status to an individual who illegally reentered the United States after removal, but who is otherwise eligible and merits approval of his or her U petition.

Although reinstatement of removal under section 241 (a)(5) of the Act is not a categorical bar to approval of U nonimmigrant classification, USCIS retains the authority to deny a U petition where cancellation of the removal order is not warranted based on serious, adverse factors such as criminality, misrepresentation, and/or an egregious pattern of immigration violations. In such situations, the removal order may be considered as an adverse factor in the discretionary decision to deny the waiver of any applicable grounds of inadmissibility which would also require the denial of the U petition.

However, once USCIS grants U nonimmigrant status to an individual, any prior or reinstated exclusion, deportation, or removal order is cancelled by operation of law. 8 C.F.R. § 214.14(c)(5)(i). Accordingly, it is not proper to subsequently revoke U nonimmigrant status based on a reinstated order that was issued prior to the approval of the U petition.

Here, despite the prior approval of the U petition and, consequently by operation of law, the cancellation of the deportation order, the Director revoked approval solely upon the fact that the record contained a reinstated order. The Director did not indicate that cancellation of the reinstated order was in error or otherwise discuss any negative discretionary factors. We find no such error or negative factors in the record. Accordingly, contrary to the Director's finding, USCIS' prior approval of the U petition resulted in the cancellation of the reinstated order by operation of law. Therefore, the Director's revocation of approval based solely on the reinstated order that was issued prior to the approval of the U petition must be withdrawn.

IV. 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). Here, the Petitioner has met her burden.

Matter of A-L-

ORDER: The appeal is sustained.

Cite as *Matter of A-L-*, ID# XXXX (AAO Jan. 12, 2017)