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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

814



Date: **JUL 18 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 its 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 motion 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 any motion to 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, denied the Petition for U Nonimmigrant Status (Form I-918) and the Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The AAO's previous order will be affirmed.

The director denied the petition on July 1, 2010 because the petitioner did not submit the requisite Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) and the petitioner, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). *Decision of the Director.*

On August 2, 2010, counsel filed a Notice of Appeal (Form I-290B) indicating that he would forward additional evidence and/or a brief within thirty days. The record did not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. On the Form I-290B counsel stated that the U.S. Attorney's Office would not provide the petitioner with a law enforcement certification even though the petitioner cooperated with law enforcement authorities in the arrest and conviction of an individual who engaged in labor certification fraud.

On February 17, 2012, the AAO summarily dismissed the petitioner's appeal for failure to identify either on the Form I-290B or through submission of a brief or evidence any erroneous conclusion of law or statement of fact made by the director. *See AAO's Decision.*

On motion to reconsider, counsel states that the failure to file a brief on appeal is not fatal to an appeal and that all the evidence filed below was sufficient to demonstrate that the petitioner had provided substantial assistance and testimony to law enforcement. *See Form I-290B*, dated March 17, 2012. In support of his motion, counsel submits the referenced Form I-290B and a letter. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(3) *Requirements for motion to reconsider.*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In his motion to reconsider, counsel states that his failure to file a brief on appeal was not fatal because the evidence was sufficient to demonstrate that the petitioner had provided substantial assistance and testimony to law enforcement authorities.¹ Counsel contends further that U.S.

¹ The AAO's prior decision did not summarily dismiss the petitioner's appeal because he failed to submit a brief. The AAO found that the petitioner had failed to identify either on the Form I-290B or through

Citizenship and Immigration Services (USCIS) should have either provided the U.S. Attorney's Office with more training in law enforcement certification processes or certified a Form I-918 Supplement B on behalf of the petitioner himself.

Counsel fails to make any argument or provide any pertinent precedent decisions which establish that the AAO's prior decision was based on an incorrect application of law or agency policy. Counsel's submission fails to meet the requirements of a motion to reconsider and consequently must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

Even if the petitioner's evidence did meet the applicable motion requirements, such evidence would not result in the AAO overturning its prior decision. The petitioner failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) and he cannot establish his helpfulness to law enforcement in the investigation or prosecution of qualifying criminal activity, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status, including obtaining a law enforcement certification.² Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act.

ORDER: The motion is dismissed.

submission of a brief or evidence any erroneous conclusion of law or statement of fact made by the director when he found that the petitioner had failed to submit the requisite Form I-918 Supplement B.

² Moreover, USCIS would not be the appropriate agency to complete the Form I-918 Supplement B in this matter because USCIS was not involved in the detection, investigation and/or prosecution of the criminal activity in question and could not attest to the petitioner's helpfulness.