

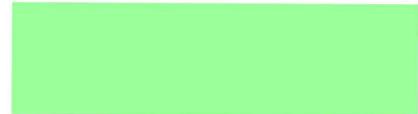


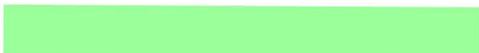
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JAN 15 2014** Office: VERMONT SERVICE CENTER



IN RE: 

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).

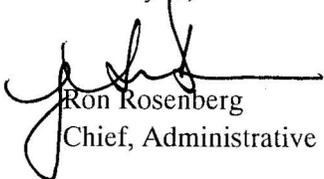
ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

*Applicable Law*

U nonimmigrant classification may be granted to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain qualifying criminal activity and who also demonstrate, among other things, that they have been, are being, or are likely “to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting [qualifying] criminal activity.” Section 101(a)(15)(U)(i)(I), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I), (III).

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

To establish a U nonimmigrant petitioner’s helpfulness to law enforcement, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) further prescribes:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be

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<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

### *Facts and Procedural History*

The petitioner is native and citizen of Mexico, who entered the United States without inspection, admission or parole in March 1999. On December 6, 2011, the petitioner filed a Form I-918 U petition which included a Form I-918 Supplement B, signed on May 31, 2011. On June 18, 2012, the director issued a Request for Evidence (RFE) of the petitioner's admissibility to the United States and because the Form I-918 Supplement B was not signed within the 6 months preceding the initial filing of the Form I-918, requested a newly issued or updated Form I-918 Supplement B. The petitioner submitted a timely response and on February 6, 2013, after considering the evidence of record, the director denied the petition due to the lack of initial evidence. On appeal, counsel submits a brief and a new Form I-918 Supplement B dated June 24, 2013.

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition, as the petitioner's submission on appeal of a new Form I-918 Supplement B, dated June 24, 2013, does not establish his eligibility.

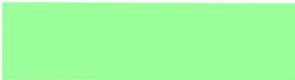
The petitioner filed his Form I-918 U petition on December 6, 2011 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). The initial Form I-918 Supplement B was dated May 31, 2011, and was not signed by the certifying official within the six months preceding the December 6, 2011 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). The new Form I-918 Supplement B was not submitted until after the denial of the Form I-918 U petition. Furthermore, the new Form I-918 Supplement B was signed on June 24, 2013, and was also not signed by the certifying official within the six months preceding the filing of the Form I-918 U petition.

Moreover, even if timely dated, the Forms I-918 Supplements B and the other relevant evidence do not establish that the petitioner was the victim of qualifying criminal activity. On both the Forms I-918 Supplement B, at Part 3.1, the certifying officials listed the crime of which the petitioner was a victim as aggravated robbery, which is not one of the qualifying crimes enumerated at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). In her cover letter on appeal, counsel asserts that the petitioner was the victim of felonious assault, but there is no evidence in the record to support this contention, and counsel has not presented any legal analysis to show that aggravated robbery under the Texas Penal Code is substantially similar to felonious assault or any of the other qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act.

Additionally, section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The petitioner is inadmissible to the United States under section 212(a)(6)(A) of the Act for being present in the United States without admission or parole, and has not shown that the grounds of inadmissibility have been waived through the grant of a Form I-192, Application for Advance Permission to Enter as Non-Immigrant.

### *Conclusion*

We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, without the requisite certification, the petitioner cannot establish that he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity as required under section 101(a)(15)(U)(i)(III) of the Act. The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence, nor has he established that he is the victim of qualifying criminal activity or his admissibility to the United



*NON-PRECEDENT DECISION*

Page 5

States. For these reasons, his appeal must be dismissed and his petition must remain denied. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

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, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.