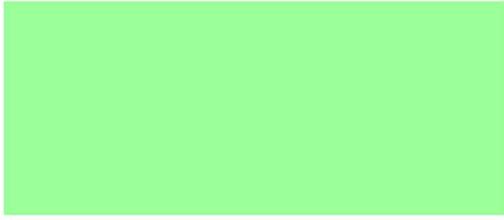


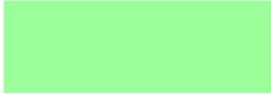
(b)(6)

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

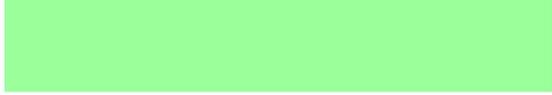


U.S. Citizenship
and Immigration
Services

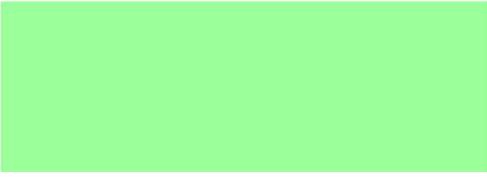


Date: Office: VERMONT SERVICE CENTER FILE: 

MAY 22 2014

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 (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 and 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.

The director denied the petition because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, the petitioner submits a statement, a new Petition for U Nonimmigrant Status (Form I-918 U petition), pages 1 and 3 of a Form I-918 Supplement B, an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) and documents already included in the record.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is 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 criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

* * *

(iii) 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 foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

¹ 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.

In addition, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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 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.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the

evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Guatemala who claims to have entered the United States in May 1997 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on May 7, 2013, without a Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, counsel submits pages 1 and 3 of a Form I-918 Supplement B and claims that the petitioner's due process rights were violated because he was denied an opportunity to submit additional evidence.

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 based upon lack of required initial evidence.

The petitioner filed his Form I-918 U petition on May 7, 2013 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). The record does not show that a completed Form I-918 Supplement B was filed with the Form I-918 U petition. On appeal the petitioner submitted pages 1 and 3 of a Form I-918 Supplement B; however, this late filed evidence may not be considered in these proceedings for several reasons.

First, eligibility for a benefit request must be established at the time of petition filing, particularly for individuals seeking U nonimmigrant classification, who are subject to an annual cap on U-1 nonimmigrant status and are placed on a waiting list, by filing date of petition, if they cannot be granted such status due solely to the cap. *See* 8 C.F.R. §§ 103.2(b)(1), 214.14(d); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The director properly denied the petition due to the lack of required initial evidence and the petitioner's submission of a Form I-918 Supplement B on appeal does not cure this defect. According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii): "[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . ." Contrary to counsel's assertions on appeal, the director did not contravene USCIS procedures by not providing the petitioner with an opportunity to supplement the record before denying the petition.

Second, even if we could consider the Form I-918 Supplement B submitted on appeal, it would fail to meet the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i), as it was not signed by the certifying official within the six months preceding the May 7, 2013 filing date of the Form I-918 U petition. The Form I-918 Supplement B is further flawed in that it is missing the second page, and it is not clear that the person at the Gallatin, Tennessee, Police Department, who signed the Form I-918 Supplement B, is

the official designated to issue U nonimmigrant certifications.² According to the regulation at 8 C.F.R. § 214.14(a)(3)(i), “certifying official” means: “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[.]” The person who signed the Form I-918 Supplement B did not provide his name and title on page 1 or evidence that he has been designed to sign law enforcement certifications on behalf of the Gallatin, Tennessee Police Department.

As the petitioner has failed to submit required initial evidence with his Form I-918 U petition, he has failed to establish his eligibility for U nonimmigrant classification and his Form I-918 U 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).³

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, that burden has not been met.⁴

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

² The Form I-918 Supplement B that the petitioner submitted on appeal indicates that he was the victim of aggravated burglary. However, without the second page of the Form I-918 Supplement B, it is unclear what criminal activity was investigated or prosecuted by the certifying agency, what injury the petitioner suffered, or if he was helpful to the certifying agency in their investigation of a qualifying crime. The petitioner submitted incident reports regarding robberies that occurred on July 26, 2011 and October 13, 2007 where he is listed as a victim but this evidence does not establish that law enforcement authorities investigated or prosecuted any qualifying crime. Aggravated burglary is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act.

³ Counsel’s submission on appeal of a new Form I-918 U petition, Form I-918 Supplement B and Form I-192 waiver is not a properly filed request for U nonimmigrant classification according to the regulations at 8 C.F.R. § 103.2(a). As the benefit request was submitted along with the filing of the Notice of Appeal (Form I-290B), it was not assigned a receipt date as described at 8 C.F.R. § 103.2(a)(7).

⁴ The director also noted that the petitioner did not establish the essential eligibility criteria at section 101(a)(15)(U)(i) of the Act but did not discuss the criteria further because the petition was being denied due to the lack of initial evidence. We also do not discuss the petitioner’s statutory eligibility for U nonimmigrant status, as he has failed to submit the required law enforcement certification at section 214(p)(1) of the Act.