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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 27 2010

IN RE: Petitioner: [REDACTED]

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:

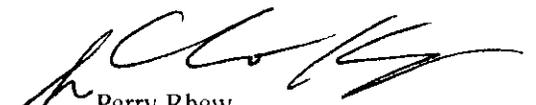


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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

The director denied the petition because the petitioner did not submit a properly executed law enforcement certification, Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). Additionally, the director noted that the submitted evidence did not establish that the petitioner suffered substantial physical or mental abuse as a result of having been the victim of a qualifying crime.<sup>1</sup>

On appeal, counsel submits a statement on the Form I-290B, Notice of Appeal or Motion, and indicates that he will submit a brief and/or additional evidence within 30 days of the appeal, or by July 22, 2010. The record does not contain the brief or additional evidence that counsel indicated he would submit, and we, therefore, consider the record complete.

*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;

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<sup>1</sup> The director also stated that the petitioner failed to submit evidence of having a valid passport; however, as this issue is not relevant to the petitioner's statutory eligibility for U nonimmigrant classification, we will not address it in our decision.

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(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; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

Further, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

Pursuant to the regulations, a petitioner must file a Form I-918, Petition for U Nonimmigrant Status, to request U nonimmigrant classification. 8 C.F.R. § 214.14(c)(1). The Form I-918 must be accompanied by certain supporting documentation or "initial evidence," including:

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.

8 C.F.R. § 214.14(c)(2)(i). A “[c]ertifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” 8 C.F.R. § 214.14(a)(2).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural Posture*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of [REDACTED] who entered the United States on February 13, 2001 as a K-1 nonimmigrant fiancée. On May 2, 2007, the petitioner was placed into proceedings before the Immigration Court in [REDACTED] through the issuance of a Notice to Appear (NTA). The petitioner’s last hearing date was scheduled for December 16, 2010. In January 2009, the petitioner filed an I-360 petition as a self-petitioning spouse of an abusive U.S. citizen, and a Form I-914 application for T nonimmigrant status. The Forms I-360 and I-914 were denied on April 21, 2009 and April 17, 2009, respectively.

The petitioner filed the instant Form I-918 U petition on November 17, 2008. On April 21, 2009, the director issued a request for evidence (RFE) because the petitioner failed to submit a properly executed law enforcement certification (Form I-918 Supplement B). The director also requested evidence to address the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel states that the director’s decision is erroneous because he cited a section of the Adjudicator’s Field Manual (AFM) which is not applicable to the matter at hand. Counsel also maintains that the director failed to address in detail each crime of which the petitioner claimed she was a victim.

#### *The Director’s Denial Decision*

In his denial decision, the director cited Chapter 39.1(c)(2)(v) of the AFM, which states that a Form I-918 U petition filed on or after November 1, 2009 should be denied for lack of initial evidence if the petitioner does not submit the Form I-918 Supplement B at the time of initial filing. The record indicates, however, that the petitioner filed the instant Form I-918 U petition on November 17, 2008. While we acknowledge the director’s error in stating that he was denying the petition because of the

petitioner's failure to submit required initial evidence, we find his error to be harmless and not prejudicial to the petitioner. The record shows that the petitioner was issued an RFE on April 21, 2009 as provided for at 8 C.F.R. § 103.2(b)(8)(ii). In the RFE, the petitioner was requested to submit a certified Form I-918 Supplement B; however, she failed to submit the form. As we shall discuss in detail below, it is the petitioner's failure to submit the Form I-918, Supplement B at any time during these proceedings that mandates the denial of the petition.

The director also stated in the denial letter that the petitioner did not submit evidence of having suffered substantial physical or mental abuse as a result of being the victim of a qualifying crime, but declined to discuss the matter in detail as he was denying the petition on another ground. Counsel objects to the director not specifically addressing the claims of abuse made by the petitioner; however, the director was not required to enter into such a discussion. The lack of a Form I-918 Supplement B in the record from a certifying agency precludes a finding that the petitioner was the victim of a qualifying crime or criminal activity. Thus, no further inquiry into the petitioner's claims of having suffered substantial physical or mental abuse is required, because she cannot establish that any abuse she may have suffered resulted from her being the victim of a qualifying crime or criminal activity.

#### *Law Enforcement Certification*

In the director's April 21, 2009 RFE, he asked the petitioner to submit a "completed . . . Form I-918, Supplement B," as the form is a required document pursuant 8 C.F.R. § 214.14(c)(2)(i). In response, counsel stated that the petitioner did not report her fiancé's abuse to the authorities and she was, therefore, unable "to provide any Agency information on the Form I-918, Supplement B."

We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, she has not overcome this portion of the director's denial decision and cannot meet any of the eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i)(I)-(IV) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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