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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

PUBLIC COPY

D14

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 22 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:

[redacted]

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. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. 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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 for lack of initial evidence because the petitioner did not submit a properly completed law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification). *See Decision of the Director*, dated Apr. 8, 2010. On appeal, the petitioner contends through counsel that he suffered substantial physical abuse as a victim of felonious assault, a qualifying criminal activity. *See Brief on Appeal*, dated June 4, 2010. The applicant further contends that although he did not submit a Form I-918 Supplement B, the police report in the record provides all of the required information. *Id.*

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

> (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[.]

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:

"The term 'any similar activity' refers to 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).

Further, section 214(p) of the Act, 8 U.S.C. § 1184(p), provides that a petition for U nonimmigrant classification must contain a certification of helpfulness from a certifying agency. Specifically, the petitioner must submit:

> 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). For individuals who were not granted U interim relief and who filed their Form I-918 on or after November 1, 2009, if all required initial evidence is not submitted with the petition, USCIS may deny the petition for lack of initial evidence. 8 C.F.R. § 103.2(b)(8)(ii).

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 History

The record reflects that the petitioner is a 36-year-old native and citizen of The petitioner claims that he entered the United States without being admitted or paroled on August 18, 1996. *See Form I-918*. On , the petitioner was stabbed in the back by unknown assailants. *See Anaheim Police Department Crime Report*, dated Aug. 22, 2004; *see also Medical Records*. interviewed the petitioner and prepared the police report. *See Crime Report*. The police report notes that the incident involved aggravated assault under section 245(a)(1) of the California Penal Code. *Id.*

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on November 25, 2009. The Form I-918 was not accompanied by a Form I-918 Supplement B signed by a certifying official. The director determined that the petitioner was ineligible for U nonimmigrant classification because he did not submit the required law enforcement certification, and denied the petition for lack of initial evidence.

Analysis

On appeal, the petitioner claims that although he has not provided a Form I-918 Supplement B signed by a certifying official, he has provided ample evidence to show that he meets all of the requirements for U nonimmigrant classification. *See Brief on Appeal.*

Pursuant to the Act, a petition for U nonimmigrant classification must contain a certification of helpfulness from a certifying agency. Section 214(p) of the Act. The regulations require the U Nonimmigrant Status Certification to be filed on Form I-918, Supplement B. *See* 8 C.F.R. § 214.14(c)(2)(i). Further, Supplement B must be signed by a certifying official within the six months immediately preceding the filing of the Form I-918. *Id.* Here, the applicant failed to file the required Form I-918 Supplement B. Because U.S. Citizenship and Immigration Services lacks the authority to waive the statutorily required law enforcement certification, the petitioner is not eligible for U

nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* section 214(p) of the Act; 8 C.F.R. § 214.14(c)(2)(i).

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.