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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

14

FILE:

Office: VERMONT SERVICE CENTER

Date: **SEP 16 2010**

IN RE:

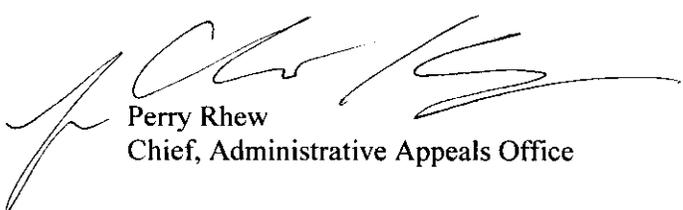
PETITION: Petition for U Nonimmigrant Classification as a Victim of Qualifying Criminal Activity Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Form I-918, Supplement B, U Nonimmigrant Status Certification submitted by the petitioner was a photocopy of the original document, and therefore did not contain an original signature. Counsel filed a timely appeal, and submitted a brief and additional evidence.

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; 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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part, the following:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

* * *

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The evidentiary guidelines for a self-petition filed under section 101(a)(15)(U) of the Act are explained further at 8 C.F.R. § 214.14(c), which states, in pertinent part, the following:

(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 USCIS [U.S. Citizenship and Immigration Services]. 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."

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

- (2) *Certifying 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. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.
- (3) *Certifying official* means:
 - (i) 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

- (ii) A Federal, State, or local judge.

* * *

- (12) *U nonimmigrant status certification* means Form I-918, Supplement B, “U Nonimmigrant Status Certification,” which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

The petitioner is a citizen of Mexico who states on the Form I-918 that she entered the United States in approximately August 2004 without inspection. She filed the instant Form I-918 on June 3, 2008. When she filed the petition, the petitioner submitted a Form I-918, Supplement B signed by the Captain of the Criminal Investigations Division (the “Captain”) of the Hidalgo County Sheriff’s Office, located in Edinburg, Texas on January 16, 2008. According to the Captain, the petitioner was the victim of criminal activity involving, or similar to, domestic violence. The Captain stated that the petitioner possessed information concerning the criminal activity and that she had been, was being, or was likely to be helpful in the investigation and/or prosecution of the criminal activity. With regard to physical injury suffered by the petitioner, the Captain stated that the petitioner was observed to have had a large, bleeding cut on her lower back.

The director issued two subsequent requests for additional evidence (RFE) to which the petitioner, through counsel, submitted timely responses. The issues raised by the director in his first RFE, dated May 8, 2009, are not at issue here. In his September 25, 2009 RFE, the director observed that the Form I-918, Supplement B submitted by the petitioner was a photocopy and, as such, lacked the Captain’s original signature. Accordingly, the director requested a Form I-918, Supplement B containing an original signature.

In his December 18, 2009 letter, counsel stated that although he had been unable to locate the form containing the original signature, his office was taking steps to acquire a new form with an original signature, and it would be submitted it as soon as possible. However, counsel also stated that his office had found no requirement that the Form I-918, Supplement B contain an original signature in either the statute or regulations, and that guidance contained at the U.S. Citizenship and Immigration Services (USCIS) website¹ stated only that “applicants and petitioners” are to provide original signatures. As noted by counsel, the Captain is neither an applicant nor a petitioner. Accordingly, counsel requested that the director approve the U visa petition based upon the record as it stood at that point.

The director was not persuaded by counsel’s RFE response, and denied the petition on February 1, 2010. In his decision, the director noted that although counsel stated in his RFE response that steps

¹ The USCIS website is located at <http://www.uscis.gov>.

had been taken to obtain a new Form I-918, Supplement B with an original signature, and that the new form would be sent to USCIS, a new form was never received. The director found that because the Form I-918, Supplement B contained in the record was a photocopy lacking an original signature, the U visa petition could not be approved. The director did not address counsel's assertions regarding the director's requirement that the Form I-918, Supplement B contain an original signature.

In his March 31, 2010 appellate brief, counsel contends that the lack of an original signature on the Form I-918, Supplement B is not a valid ground for denying the U visa petition. Counsel states, again, that neither the statute nor the regulations governing the issuance of U visas mandate an original signature on the Form I-918, Supplement B. Counsel also explains the lengths to which his office has gone to obtain a new the Form I-918, Supplement B. He offers a timeline of his office's communications with the Hidalgo County Sheriff's Office, and explains the contents of each written communication and telephone call. According to counsel, the Hidalgo County Sheriff's Office refuses to sign a new Form I-918, Supplement B because the case with which the petitioner was offering assistance has been closed. Although the Hidalgo County Sheriff's Office did agree to submit a declaration that the Captain did in fact sign the Form I-918, Supplement B on January 16, 2008, counsel explains that he has never received that declaration or any further correspondence.

Counsel submits additional evidence, beyond his own assertions, regarding the bona fides of the Form I-918, Supplement B contained in the record. First, counsel submits an organizational chart he printed from the website of the Hidalgo County Sheriff's Office.² This organizational chart contains the name, professional title, and picture of both the certifying official and head of the certifying agency contained on the Form I-918, Supplement B. Counsel also submits contact information for the Hidalgo County Sheriff's Office he printed from the website of Texas Crime Stoppers.³ As noted by counsel, the fax number provided for the Hidalgo County Crime Stoppers of the Hidalgo County Sheriff's Office matches the sender's fax number imprinted at the top of each page of the Form I-918, Supplement B. According to counsel, the photocopied Form I-918, Supplement B of record "bears all the indicia of having been faxed from the Hidalgo Sheriff's Office," and that "[i]t is clear that this was executed and sent from an appropriate law enforcement official."

The sole issue before the AAO on appeal is whether the photocopied Form I-918, Supplement B of record, which lacks an original signature, is sufficient; the director raised no other substantive issues in either RFE⁴ or in his denial. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's February 1, 2010 decision and sustains the petitioner's appeal.

² The website of the Hidalgo County Sheriff's Office is located at [REDACTED]

³ The website of the Texas Crime Stoppers is located at [REDACTED]

⁴ The director's May 8, 2009 RFE requested only an executed Form I-192 and a copy of the petitioner's personal data page from her passport or border crossing card, if applicable. His September 25, 2009 RFE only discussed the matter at issue on appeal.

The language of neither the statute nor the regulations mandates an original signature on the Form I-918, Supplement B. Although the AAO acknowledges the desirability of an original signature over a photocopied one, given the lack of such a requirement in the statute or regulations the director's denial of the petition on this ground, alone, was not justified. While the director did not indicate whether he was concerned that the photocopied Form I-918, Supplement B submitted by the petitioner was not a true copy of the original, the AAO finds nonetheless that the evidence submitted by counsel on appeal establishes conclusively that it is a true copy of the original. The AAO also finds counsel's explanation regarding the impracticality of obtaining a new Form I-918, Supplement B reasonable and supported by the record. In the absence of any stated concerns of fraud or other reasons to question the validity of the Form I-918 Supplement B, the AAO finds that, in this particular case, the director's decision denying the petition because the Form I-918, Supplement B was a photocopy of the original was justified by neither the statute nor the regulations, and the AAO concurs with the director's determination that the petitioner meets all other statutory requirements.

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 been met as to the petitioner's statutory eligibility for U nonimmigrant status.

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. *See Decision of the Director*, dated February 1, 2010. The AAO has no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). As the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, the AAO will return the matter to the director for reconsideration of the Form I-192.

ORDER: The appeal is sustained. Because the petitioner is statutorily eligible for U nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 petition, which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.