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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

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814

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JAN 11 2011

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:

SELF-REPRESENTED

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. 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 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 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), or establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The director also found that the petitioner was inadmissible to the United States. On appeal, the petitioner submits a statement on the Form I-290B, Notice of Appeal, and provides copies of 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; 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[.]

In addition, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

Further, section 214(p) of the Act, 8 U.S.C. § 1184(p), 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 El Salvador who was removed from the United States on November 6, 2007 after his prior order of removal was reinstated. The petitioner claims on the Form I-918 U petition to have reentered the United States in July 2008. The petitioner filed the instant Form I-918 U petition on September 26, 2008. On November 2, 2009, the director issued a Request for Evidence (RFE) because the petitioner failed to submit, in part, a properly executed law enforcement certification (Form I-918 Supplement B) or a statement describing the facts of his victimization. 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 Form I-918 U petition and the petitioner timely appealed.

On appeal, the petitioner states that it is clear to him that it does not matter what documents he submits to U.S. Citizenship and Immigration Services (USCIS) because it appears that USCIS only cares about the law enforcement certification being signed. The petitioner states that he cannot force a federal judge to sign the Form I-918 Supplement B, and perhaps the judge did not sign it because she does not care.

Law Enforcement Certification

The record contains a Form I-918 Supplement B that was completed in the petitioner's handwriting that he sent to [REDACTED], for signature. The record also contains a letter from [REDACTED], dated September 5, 2008, returning the Form I-918 Supplement B to the petitioner because: "I am not an immigration judge or official. I am not able to sign the I-918 form on your behalf as it does not seem appropriate that I do so." We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, 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, he has not overcome this portion of the director's denial decision and cannot meet any of the eligibility criteria for U nonimmigrant classification under subsections 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 his petition must be denied.¹

¹ As the petitioner is statutorily ineligible for U nonimmigrant status, we do not reach the issue of his admissibility to the United States.

As in all visa petition proceedings, the petitioner bears the burden of proving his 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.