identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

D14

[redacted]

Date: SEP 0 9 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

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 APPLICANT: 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. 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 Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On appeal, the petitioner submits a letter. The record reflects that, on April 1, 2010, the petitioner filed a Notice of Appeal (Form I-290B). On the Form I-290B, the petitioner indicated that she would forward additional evidence and/or a brief within thirty days. The record does not contain the brief and/or evidence that the petitioner indicated would be submitted to the AAO. Accordingly the record is complete.

Applicable Law

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

> (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[.]

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 the Form I-918 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 petitioner is a native and citizen of Haiti who, on January 18, 2000, filed an Application for Asylum and for Withholding of Removal (Form I-589) indicating that she entered the United States without inspection on May 21, 1999. On February 29, 2000, the Form I-589 was referred to an immigration judge and the petitioner was placed into immigration proceedings. On July 23, 2001, the immigration judge made an adverse finding of credibility against the petitioner, denied the petitioner's applications for asylum, withholding of removal and protection under the Convention Against Torture and ordered the petitioner removed from the United States. The petitioner filed an appeal with the Board of Immigration Appeals (BIA). On December 13, 2002, the BIA dismissed the petitioner's appeal.

On April 16, 2008, the petitioner filed the instant Form I-918 U petition. On August 24, 2009, the director issued a Notice of Intent to Deny (NOID). The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility because the petitioner failed to submit a properly certified law enforcement certification (Form I-918 Supplement B). Accordingly, the director denied the Form I-918 U petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918.

On appeal, the petitioner cites 8 C.F.R. § 245.24(c),[1] which she states allows her to submit an affidavit describing her efforts to obtain the required Form I-918 Supplement B in lieu of the actual law enforcement certification form. The petitioner claims that she went to the police station to obtain a signature on a Form I-918 Supplement B, but officials refused to sign it. The petitioner states that, although she is citing a regulation that pertains to the adjustment of status of U nonimmigrants, those individuals seeking initial U nonimmigrant status should also be permitted to submit alternate evidence in lieu of the Form I-918 Supplement B because of the barriers they face obtaining evidence from law enforcement officials.

Analysis

The petitioner's citation to the language at 8 C.F.R. § 245.24(e)(2) is misplaced, as that section of the regulations relates to individuals who have already been granted U nonimmigrant status and are seeking to adjust to lawful permanent resident status. The Form I-918 Supplement B is a statutory requirement at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). The regulation further prescribes that a Form I-918 U petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity;

[1] In her statement, the petitioner quotes the language at 8 C.F.R. § 245.24(e)(2), not the language from 8 C.F.R. § 245.24(c).

(5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

Rather than submitting the certification required by statute and regulation, the petitioner submitted a statement regarding her actions in going to a police station to have an official there sign the form. This statement, however, does not suffice. A statement from the petitioner or other documentation such as police reports or criminal records may not be accepted in lieu of the law enforcement certification required by the statute at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). 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. 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 she cannot establish her helpfulness to law enforcement in the investigation or prosecution of qualifying criminal activity, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) 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.

Remaining Eligibility Criteria

The petitioner also fails to meet the remaining eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner stated that she was the victim of assault and false imprisonment in Haiti. As evidence of her victimization and resultant abuse, the petitioner submitted her own, brief statement, without elaboration or detail. Her brief assertions are insufficient to establish the petitioner's victimization and resultant abuse. The record also lacks any evidence that the alleged offenses committed against the petitioner in Haiti violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offenses in the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(b)(4).

Conclusion

The petitioner did not submit the law enforcement certification required by section 214(p)(1) of the Act and did not establish that she was the victim of qualifying criminal activity. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain 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.