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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

D14

DATE: FEB 09 2012

Office: VERMONT SERVICE CENTER

IN RE:

Petitioner:

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 will remain denied.

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 determining that the petitioner had not submitted a properly certified Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) and thus the petitioner had not established that she had suffered substantial physical or mental abuse as the result of being the victim of a qualifying crime or criminal activity. On appeal, the petitioner’s representative submits a brief and a third Form I-918 Supplement B. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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[.]

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. 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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims she entered the United States in or about 1999 without inspection. The petitioner filed the instant Form I-918 on October 9, 2010. On October 12, 2010, the director issued a request for evidence (RFE) to establish the eligibility criteria for the Form I-918 petition, including a request for a properly certified Form I-918 Supplement B. Upon review of the record, including the petitioner's response to the RFE, the director found the evidence submitted insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 petition with the petitioner's representative asserting that United States Citizenship and Immigration Services (USCIS) erred in finding that the petitioner did not qualify for U status. An insufficient third Form I-918 Supplement B was also submitted. The AAO issued an RFE dated October 4, 2011 requesting a properly certified Form I-918 Supplement B with original signature to conform to the regulation at 8 C.F.R. § 103.2(a)(2) and copies of the attachments referenced by the certifying official in response to questions in Part 3.5, Part 3.6, and Part 4.5 on the Form I-918 Supplement B. As no response to the AAO's RFE has been submitted within the time specified in the RFE, the record is considered complete.

Analysis

Pursuant to the regulations at 8 C.F.R. § 214.14(c)(1), a Form I-918 U petition must be accompanied by certain supporting documentation or "initial evidence," including a Form I-918 Supplement B signed by a certifying official who must state, in part, that the petitioner 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; 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)(2)(i) further prescribes the requirements for the Form I-918 Supplement B certification that must be filed with a Form I-918 petition requiring that the certification 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; (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.*

In addition, the regulation at 8 C.F.R. § 103.2(a)(2) provides for the general requirement that all applications and petitions must contain an original handwritten signature. Upon review of the three Forms I-918 Supplement B submitted, they do not suffice as the required evidence necessary to establish eligibility for the U nonimmigrant classification. With the April 26, 2010 Form I-918 Supplement B, it is not clear that the desk officer at the Fontana Police Department is the official designated to issue U nonimmigrant certifications. When the director requested evidence of the desk officer's authority, the petitioner provided a December 20, 2010 Form I-918 Supplement B, with a signature stamp of an unidentified individual as the certifying official but who is not listed as the certifying official or head of the certifying agency in Part 2. The January 31, 2011, Form I-918 Supplement B, using the same signature stamp as in the previously submitted Form I-918 Supplement B, amends Part 2 to list the certifying official as [REDACTED] of the district attorney's office; however, no original signature is provided.

As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), she has not established 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.

Conclusion

The petitioner has failed to submit the certification required by section 214(p)(1) of the Act. She is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) 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.