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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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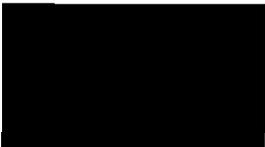


Date: **JUL 11 2012** Office: VERMONT SERVICE CENTER FILE:

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. § 101(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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (“the director”), 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.

Applicable Law

Section 101(a)(15)(U)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

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).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Factual and Procedural History

The petitioner is a native and citizen of Uruguay who claims to have entered the United States in July 2006 without being inspected, admitted, or paroled by an immigration officer. On August 23, 2010, the petitioner filed a Form I-918 U petition without the *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently denied the petition due to the lack of initial evidence.¹ On appeal, counsel for the petitioner states that once the Form I-918 Supplement B was obtained from the law enforcement agency, it was sent to the Vermont Service Center. Counsel provides a photocopy of the Form I-918 Supplement B, dated December 27, 2010, and a letter requesting that the Form I-918 Supplement B which was not included with the initial application be accepted. Counsel notes that no request for evidence (RFE) was sent to the petitioner or counsel notifying them that the December 27, 2010 Form I-918 Supplement B was not included in the record.

Analysis

Upon review, we find no error in the director's decision to deny the petition. The petitioner is required to submit a Form I-918 Supplement B as initial evidence that conforms to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i). We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, United States Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. Counsel has not provided any statutory or regulatory citations to support his implied assertion that the director must issue an RFE when the initial evidence submitted fails to establish eligibility. According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii):

If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director was not required to request the missing Form I-918 Supplement B and his denial of the petition due to the lack of missing initial evidence was proper. Even if the director had requested a Form I-918 Supplement B and the petitioner submitted the original of the copy attached to the appeal, the Form I-918 Supplement would have been deficient. The Form I-918 Supplement B that the petitioner relies on to establish her eligibility as the victim of a qualifying crime was signed on December 27, 2010. The regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(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. . . .

¹The director also stated that he noted other deficiencies the record but failed to address them because he was denying the petition for failure to submit required evidence.

The petitioner filed her Form I-918 U petition on August 23, 2010, prior to the certifying official's signature on the Form I-918 Supplement B. Accordingly, the Form I-918 Supplement B does not conform to the regulation at 8 C.F.R. § 214.14(c)(2)(i). Without a proper law enforcement certification, the petitioner cannot establish that she was the victim of qualifying criminal activity and consequently cannot meet any of the eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

Conclusion

The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. For this reason, her appeal must be dismissed and her petition must remain denied. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a new Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 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.

ORDER: The appeal is dismissed. The petition remains denied.