

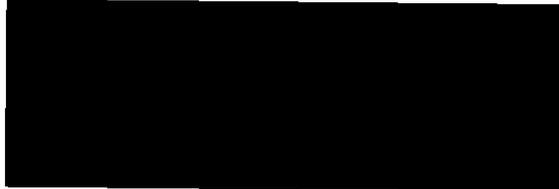
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



814

Date: JUL 18 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. § 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 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 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) 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) of the Act, 8 U.S.C. § 1101(a)(15)(U) provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. 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 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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

Factual and Procedural History

The petitioner is native and citizen of El Salvador, who claims to have entered the United States without inspection, admission or parole in April 2005. On August 8, 2011, the petitioner filed the instant Form I-918 U petition without the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The director subsequently denied the Form I-918 due to the lack of initial evidence. On appeal, the petitioner through counsel submits a Form I-918 Supplement B, dated August 10, 2010; a victim's impact statement; and other evidence.

Analysis

Upon review, we find no error in the director's decision to deny the petition, as the petitioner's submission on appeal of an original Form I-918 Supplement B, dated August 20, 2010, does not warrant a withdrawal of the director's decision.

The petitioner filed her Form I-918 U petition on August 8, 2011 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). The petitioner did not, however, submit a properly completed Form I-918 Supplement B until after the denial of the Form I-918 U petition. In addition, this Form I-918 Supplement B, dated August 20, 2010, was not signed by the certifying official within the six months preceding the August 8, 2011 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). For these reasons, the petition may not be approved.

Beyond the director's decision, at Part 3.3, the Form I-918 Supplement B does not contain a statutory citation for the criminal activity that was investigated or prosecuted, and at Part 4.2, the certifying official indicated that the petitioner was not helpful and is not likely to be helpful in the investigation and/or prosecution of the criminal activity. Accordingly, the Form I-918 Supplement B submitted on appeal is not a law enforcement certification described at section 214(p)(1) of the Act because it fails to state that the petitioner 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) of the Act.¹

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683

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 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.