

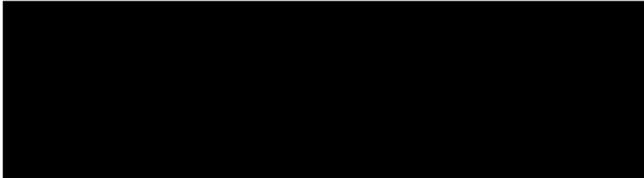
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

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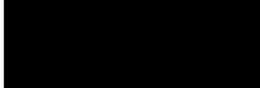


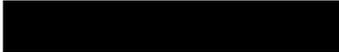
U.S. Citizenship  
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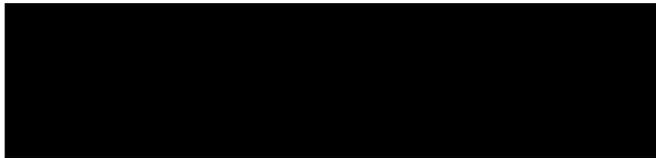
Date: **MAR 19 2012** Office: VERMONT SERVICE CENTER

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:

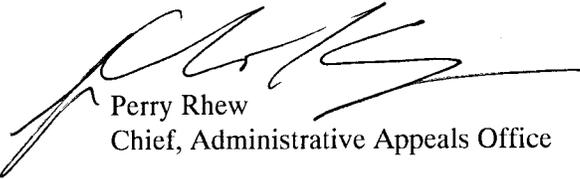


**INSTRUCTIONS:**

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 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 service center director (“the director”) denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion to reconsider. The matter is again before the AAO on a second motion to reopen or reconsider. The motion will be granted. The decision dismissing the appeal shall be affirmed and 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 on the basis of his determination that the petitioner had failed to establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. The AAO affirmed the director’s decision, noting the agency’s authority to determine a petitioner’s eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, as well as its authority to determine the evidentiary value of a law enforcement certification (Form I-918 Supplement B) under the regulation at 8 C.F.R. § 214.14(c)(4).

The petitioner filed a motion to reconsider the AAO’s decision, which the AAO dismissed as untimely. In this second motion to reopen or reconsider, counsel reiterates his assertions in the first motion regarding the failure of the director and the AAO to give presumptive weight to the information on the Form I-918 Supplement B. In support of his claims, counsel submits a letter from [REDACTED] to the Vermont Service Center Director regarding allegations that an officer from U.S. Immigration and Customs Enforcement (USICE) contacted the Vermont Service Center to request that the service center not “honor” any law enforcement certifications completed by the certifying official, [REDACTED], who provided the Form I-918 Supplement B for the petitioner. Counsel maintains that he has reason to suspect that the improper inferences from USICE may have formed the bases of the director and the AAO’s decisions regarding the petitioner’s eligibility for U nonimmigrant classification.

As the applicable law, facts and procedural history were adequately documented in our dismissals of the appeal and the petitioner’s first motion, they shall not be repeated here. Rather, this decision will focus on the assertions in counsel’s briefs that were filed in conjunction with the first and second motions.

Counsel first asserts that in concluding that the petitioner was not a victim of the crimes that the certifying official indicated on the Form I-918 Supplement B, the AAO failed to follow its own regulations, which limit the AAO to analyzing only the evidence in the record before it. Counsel states that by analyzing the criminal statutes cited in the Form I-918 Supplement B and comparing them to the facts in the record, the AAO went beyond the scope of its area of expertise and authority, which does not permit the AAO to challenge or otherwise question the statements made by a certifying official. Counsel also alleges that U.S. Citizenship and Immigration Services (USCIS) was biased in its evaluation of the Form I-918 Supplement B, and bases his assertion on the content of [REDACTED] letter. Finally, counsel claims that the petitioner was the victim of perjury in that the petitioner’s former employer, [REDACTED] engaged in a conspiracy to commit and actually committed perjury in completing the Employment Verification Forms (I-9) on behalf of the petitioner as well as other [REDACTED]

workers.

The AAO's dismissal of the petitioner's appeal addressed counsel's assertions on motion regarding a U nonimmigrant petitioner's burden of proof and USCIS's authority to determine the evidentiary value of a law enforcement certification.. As stated in that decision, the regulations do not delegate any authority to determine the petitioner's eligibility for U nonimmigrant classification to the certifying agency; that authority rests with USCIS. Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). USCIS also determines "in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, 'U Nonimmigrant Status Certification.'" 8 C.F.R. § 214.14(c)(4).

Counsel's assertions that the AAO may not analyze a criminal statute or question the statements made by a certifying official have no merit. Counsel's citation to *Watkins v. INS*, 63 F.3d 844 (9<sup>th</sup> Cir. 1995) to support his assertion that the AAO "failed to state a proper basis for rejecting the expert opinion of law enforcement" is not on point, as *Watkins* concerned the standard of review by the Board of Immigration Appeals (BIA) for motions to reopen proceedings before it. The other case cited by counsel, *Francis v. Reno*, 269 F.3d 162 (3<sup>rd</sup> Cir. 2001) is similarly not relevant to these proceedings. Unlike the BIA in *Francis*, which was interpreting the meaning of the term "felony" within section 16 of Title 18 of the U.S. Code, USCIS, under its authority delegated by the Secretary of Homeland Security, determines who is eligible for U nonimmigrant classification based upon the evidence in the record, including the information provided on the Form I-918 Supplement B. As explained in the preamble to the U nonimmigrant visa interim rule:

*b. Additional Evidence To Satisfy the Eligibility Requirements.* While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007)

Accordingly, the AAO did not go beyond its authority in determining that the petitioner was not a victim of the crimes listed on the Form I-918 Supplement B. While the allegation contained in [REDACTED]'s letter is serious, the record lacks any evidence of illegal or inappropriate contact between the Vermont Service Center and any ICE officer in regards to this petition. . The AAO's decision to dismiss the appeal was based upon its *de novo* review of the proceedings. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3<sup>d</sup> Cir. 2004). As discussed in our dismissal of the appeal, the petitioner failed to establish that he was the victim of the crimes certified on the Form I-918 Supplement B.

Finally, counsel reiterates the petitioner's eligibility for U nonimmigrant status, stating that the petitioner was a victim of perjury through [REDACTED] certification of an I-9 form regarding the petitioner's ability to be legally employed. However, counsel fails to recognize that the petitioner is

excluded from being recognized as a victim of perjury because he was culpable for misrepresenting his authorization to work by giving [REDACTED] his son's social security number to use on the I-9 form.<sup>1</sup> The petitioner, therefore, could not be recognized as a victim of the crime of perjury. 8 C.F.R. § 214.14(a)(14)(iii) (If a petitioner "is culpable for the qualifying criminal activity being investigated or prosecuted[, he is] excluded from being recognized as a victim of qualifying criminal activity.")<sup>2</sup>

The petitioner's motion does not establish any error in our prior decisions. As stated in the decision to dismiss the petitioner's appeal, he has not demonstrated that he was the victim of perjury, trafficking, involuntary servitude, forced labor, or any other qualifying crime described at section 101(a)(15)(U)(iii) of the Act, or any similar activity to the statutory crimes. He therefore also fails to meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will remain dismissed.

**ORDER:** The motion is granted. The AAO's decision to dismiss the appeal, dated December 20, 2010, is affirmed. The petition remains denied.

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<sup>1</sup> In his September 4, 2009 affidavit at page six, the petitioner stated that when he completed his job application at [REDACTED] asked for his social security number. The petitioner recounted: "I didn't have a Social Security number, and I knew nobody who could help me get one. I made the decision to use my son's Social Security number, thinking that was the best solution, and I used it to work[.]"

<sup>2</sup> On June 4, 2008, the petitioner pled guilty to one count of social security number fraud in violation of Or. Rev. Stat. Ann § 42:408(a)(7)(B), and was sentenced to time served, ordered to pay a fine of \$100.00, and placed on supervised release for two years. U.S. District Court, District of Oregon, Case No. [REDACTED]