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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  
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Services

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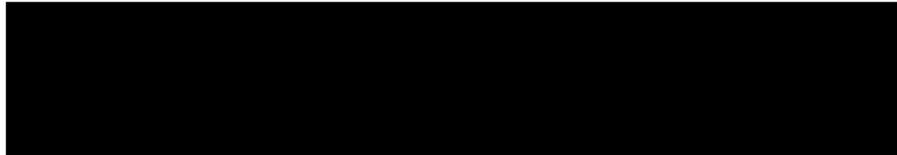
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Date: **MAY 03 2012** Office: VERMONT SERVICE CENTER FILE: 

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 Director, Vermont Service Center (“the director”), denied the U 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)(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.

*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 (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of 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;

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(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[.]

In the case of a victim who was under the age of 16, incompetent or incapacitated at the time the qualifying criminal activity was committed, the victim’s “parent, guardian, or next friend” may satisfy the requirements of subsections 101(a)(15)(U)(i)(II) and (III) of the Act on the petitioner’s behalf.<sup>1</sup> 8

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<sup>1</sup> The term “next friend” is defined at 8 C.F.R. § 214.14(a)(7).

C.F.R. § 214.14(b)-(c).

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).

The regulation at 8 C.F.R. § 214.14(a)(12) defines the law enforcement certification required by section 214(p)(1) of the Act as: "[F]orm I-918, Supplement B, "U Nonimmigrant Status Certification," which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim."

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).

#### *Facts and Procedural History*

The petitioner is native and citizen of Mexico, who claims to have entered the United States in September 2007 without being inspected, admitted or paroled by an immigration officer. On February 25, 2011, 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.<sup>2</sup> On appeal, the petitioner through counsel submits a brief and copies of documents already included in the record. Counsel states that because the petitioner was under the age of 16 when the qualifying crime was committed, he does not need to provide evidence of his cooperation with law enforcement authorities through the submission of a Form I-918 Supplement B. Counsel states further that a Form I-918 Supplement B is not necessary because an officer of U.S. Immigration and Customs Enforcement (USICE) provided a detailed report of the petitioner's helpfulness through the completion of a Record of Deportable/Inadmissible Alien (Form I-213).

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

Neither the petitioner nor counsel disputes that a Form I-918 Supplement B has not been submitted in conjunction with the Form I-918 U petition. Rather, counsel argues that due to his age and the submission of a Form I-213 from USICE, the petitioner has met the statutory requirement of establishing his helpfulness to law enforcement authorities and, therefore, the submission of a Form I-918 Supplement B is not required. According to counsel:

[C]ongress has carved out a statutory exception for minors relieving them from the requirement that they provide information pertaining to the qualifying criminal activity. . . . Accordingly, if [the petitioner] is not required to provide information, he cannot be required to provide certification of having provided that information. That [the petitioner] was helpful to law enforcement does not place him outside of the exception.

There is no statutory or regulatory basis to support counsel's assertion that victims who are minors are not required to submit a certified Form I-918 Supplement B. In the case of a crime victim who is under the age of 16, incompetent or incapacitated, the statute and the regulation at 8 C.F.R. §§ 214.14(b)(2)-(3), (c)(2)(ii) allow for the victim's parent, guardian or next friend to satisfy the criteria at subsections 101(a)(15)(U)(i)(II) and (III) of the Act regarding the possession of information concerning the qualifying criminal activity and helpfulness to law enforcement authorities in investigating or prosecuting the crime(s). Nonetheless, the law enforcement certification, which is defined at 8 C.F.R. § 214.14(a)(12) as a Form I-918 Supplement B, is required by section 214(p)(1) of the Act regardless of whether the information about the qualifying criminal activity was provided by the victim; or the victim's parent, guardian or next friend. Here, although the record demonstrates that the petitioner provided information to USICE relevant to his smuggling, neither USICE nor any other law enforcement entity certified a Form I-918 Supplement B on his behalf. The record also does not contain a certified Form I-918 Supplement B that was based upon information that the petitioner's parent, guardian, or next friend provided regarding the criminal activity perpetrated against the petitioner.

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<sup>2</sup>In addition, the director determined that the petitioner had failed to establish all of the eligibility criteria at section 101(a)(15)(U)(i) of the Act, but did not elaborate further.

Similarly, the Form I-213 that provides information about the petitioner's encounter with USICE is not a law enforcement certification under section 214(p)(1) of the Act and may not be accepted as such. The regulation defines the statutorily required certification as the Form I-918, Supplement B. 8 C.F.R. § 214.14(a)(12). As explained in the preamble to the U nonimmigrant visa interim rule: "This rule designates Form I-918, Supplement B, 'U Nonimmigrant Status Certification,' as the form that petitioners must obtain from a certifying official of a certifying agency." 72 Fed. Reg. 179, 53014 - 42, 53023 (Sept. 17, 2007). U.S. Citizenship and Immigration Services (USCIS) lacks the authority to accept other evidence in lieu of the certified Form I-918 Supplement B required by section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

*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, his appeal must be dismissed and his 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 241(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.