

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

[REDACTED]

B14

Date: **OCT 15 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]

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:
[REDACTED]

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 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 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 request 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 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) 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 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...; 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 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 a native and citizen of Mexico, who claims to have entered the United States in November 2000 without being inspected, admitted, or paroled by an immigration officer. On January 4, 2011, the petitioner filed a Form I-918 U petition with an accompanying *U Nonimmigrant Status Certification* (Form I-918 Supplement B) that was signed and dated by a certifying official on May 18, 2010. On May 4, 2011, the director issued a Request for Evidence (RFE) to obtain additional evidence that petitioner qualifies as an indirect victim of a qualifying crime and that he had suffered substantial physical and mental abuse. The petitioner timely responded to the RFE and on January 5, 2012, the director denied the petition because the petitioner failed to meet the requirements set forth in 8 CFR § 214.14(b) for U nonimmigrant status, and for failure to submit a properly executed Form I-918 Supplement B. On appeal, the petitioner through counsel submits a newly-certified Form I-918 Supplement B and additional evidence, and contends that this additional evidence establishes the petitioner's eligibility for a U nonimmigrant classification.

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, as the petitioner's submission on appeal of an original Form I-918 Supplement B, dated January 25, 2012, and additional evidence does not warrant a withdrawal of the director's decision.

The petitioner filed his Form I-918 U petition on January 4, 2011 and was required to submit a Form I-918 Supplement B signed by the certifying official within the six months preceding the filing as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). Although the petitioner submitted a Form I-918 Supplement B with his petition, it was not signed by the certifying official within the six months preceding the January 4, 2011 filing date of the Form I-918 U petition.¹ The petitioner's second Form I-918 Supplement B, dated January 25, 2012, was not submitted until after the denial of the Form I-918 U petition. Consequently, neither Form I-918 Supplement B in the record meets the requirements for a law enforcement certification described at section 214(p)(1) of the Act because neither Form I-918 Supplement B was signed and dated within the six-month period prior to the filing of the petition.²

¹ Additionally, the original Form I-918 Supplement B signed on May 4, 2011, stated that the petitioner did not possess information concerning the criminal activity listed in Part 3.

² The director also denied the petition, in part, because the petitioner was not a victim of qualifying criminal activity; however, as the appeal is being dismissed for failure to submit required initial evidence, the AAO will not discuss this issue further.

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 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.