

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

(b)(6)

Date:  
**APR 23 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

PETITIONER: [REDACTED]

APPLICATION:

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:

SELF-REPRESENTED

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,

Ron Rosenberg  
Acting 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 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 because: (1) the petitioner did not submit a properly executed law enforcement certification (Form I-918 Supplement B) when initially filing her petition; and (2) she is inadmissible to the United States, and she failed to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). On appeal, the petitioner submits a statement on appeal and additional evidence.

*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 . . . possesses information concerning criminal activity described in clause (iii);
- (III) 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; stalking; 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; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

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<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013,

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

\* \* \*

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires that a Form I-918 Supplement B signed by a certifying official of a certifying agency must be submitted with the Form I-918 petition for U nonimmigrant classification.

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

- (i) 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
- (ii) A Federal, State, or local judge.

In addition, like all other nonimmigrants, petitioners for U classification must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at

8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

#### *Facts and Procedural History*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who claims to have last entered the United States on December 12, 2004 without inspection.

The petitioner filed the instant Form I-918 U petition with an accompanying Form I-918 Supplement B on January 3, 2012. On April 26, 2012, the director issued a Request for Evidence (RFE) to the petitioner, requesting that she submit a new Form I-918 Supplement B completed by a certifying official and a Form I-192 to waive her ground of inadmissibility. In response, the petitioner submitted a Request for Fee Waiver (Form I-912) but failed to submit the required Form I-192 or the Form I-918 Supplement B. The director found the petitioner's response insufficient to establish her eligibility because she failed to submit a properly certified Form I-918 Supplement B. He also noted that the petitioner was inadmissible to the United States and she had not submitted a Form I-192 waiver application. Accordingly, the director denied the petition. The petitioner timely appealed.

On appeal, the petitioner states that the Marietta Police Department is the certifying agency because they took her to the domestic violence shelter, as well as the Department of Homeland Security because they deported her children's father from the United States. Additionally, she claims that she submitted the Form I-192.

#### *Inadmissibility*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States.

On April 26, 2012, the director requested that the petitioner submit a Form I-192 because she was inadmissible under section 212(a)(6)(A)(i) of the Act (present in the United States without admission or parole). She failed to submit the Form I-192 in her response to the director's request. On appeal, the petitioner claims that she filed a Form I-192; however, the record does not show that a waiver application was filed on the petitioner's behalf. Since the petitioner has not established that she filed a Form I-192, she remains ineligible for U nonimmigrant classification because she is inadmissible to the United States.

#### *Law Enforcement Certification*

The petitioner has failed to submit a Form I-918 Supplement B from a certifying agency and signed by a certifying official. The petitioner submitted a Form I-918 Supplement B that was completed by a case manager at the YWCA of North Georgia; however, the YWCA is not a certifying agency and the case manager is not a certifying official, as those terms are defined in the regulation at 8 C.F.R. § 214.14(a)(2) – (3). The YWCA of North Georgia is not a Federal, State, or local law enforcement agency; or the office of a prosecutor, judge, or other authority that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. *See* 8 C.F.R. § 214.14(a)(2) (defining “certifying agency”). Because the YWCA of North Georgia is not a certifying agency, the record also does not establish that the case manager is the head of a certifying agency or a supervisor within such an agency who has been specifically designated to issue U nonimmigrant status certifications. *See* 8 C.F.R. § 214.14(a)(3)(i) (defining “certifying official”). U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for a law enforcement certification at section 214(p)(1) of the Act. Accordingly, the petitioner's Form I-918 Supplement B does not meet the statutory and regulatory requirements for the certification necessary to establish eligibility for U nonimmigrant classification.

#### *Conclusion*

The petitioner failed to submit the certification required by section 214(p)(1) of the Act. The petitioner is also inadmissible to the United States and she has failed to establish that she has been granted a waiver of inadmissibility. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and the appeal must be dismissed.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.