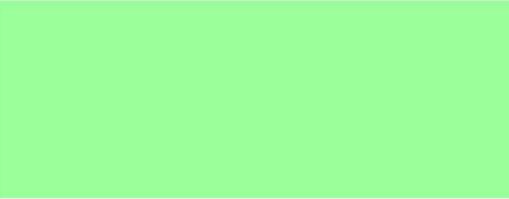


(b)(6)

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



Date: **AUG 30 2013** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be dismissed and the underlying petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. On January 4, 2013, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). In his decision on the Form I-918 U petition, the director stated that the petitioner did not establish that he was a victim of qualifying criminal activity. The petitioner, through counsel, timely filed an appeal with the AAO. The appeal was dismissed as the petitioner did not establish that the criminal activity investigated and/or prosecuted was substantially similar to any qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner, through counsel, timely filed the instant motion with the AAO.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part:

* * *

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. . . .

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. . . .

* * *

The petitioner has failed to meet either the requirements for a motion to reopen or a motion to reconsider. In his brief on motion, counsel failed to state any new facts to be proven as required. The AAO acknowledges that the petitioner submits a new Form I-918 Supplement B, U Nonimmigrant Status Certification, on motion; however, the Form I-918 Supplement B provides no new information. As such, the motion to reopen must be dismissed. *See* 8 C.F.R. § 103.5(a)(2).

Counsel also failed to establish that the May 20, 2013 AAO decision was based on an incorrect application of law or United States Citizenship and Immigration Service (USCIS) policy as required, and he failed to support his contentions with any pertinent precedent decisions. Counsel's brief on motion repeats verbatim his January 9, 2013 brief previously submitted on appeal. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is dismissed. The petition remains denied.