

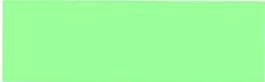
(b)(6)

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

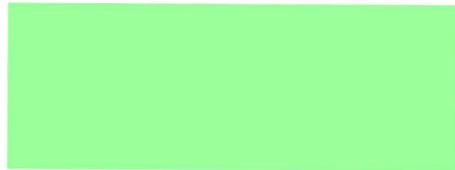


Date: **DEC 24 2013** Office: VERMONT SERVICE CENTER FILE: 

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg  
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 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 because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief.

*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>

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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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, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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 or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; 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 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 [U.S. Citizenship and Immigration Services (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."

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*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who entered the United States in December 1989 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) on November 29, 2011 with an accompanying Form I-918 Supplement B that was not signed by a person recognized as a certifying official. The director issued a Request for Evidence (RFE) that the individual who signed the Form I-918 Supplement B was the head of the certifying agency or was specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications. The director also requested evidence of the petitioner's helpfulness to the certifying agency and his criminal history, a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) to waive his ground of inadmissibility, and a copy of his passport. In response to the RFE, the petitioner submitted statements, a Form I-192, and a memorandum from the [REDACTED] Manager's Office. The director determined that the petitioner failed to establish who signed the Form I-918 Supplement B, and therefore, could not establish his eligibility under 8 C.F.R. § 214.14(b). She denied the petition accordingly. The petitioner appealed the denial of the Form I-198 U petition.

On appeal, counsel claims that although the certifying official, Mr. [REDACTED], did not write his name on the Form I-918 Supplement B, the letter from the [REDACTED] Manager's Office indicates that Mr. [REDACTED] was appointed to be the Interim Deputy Police Chief and therefore he is the certifying official. Counsel asserts that Mr. [REDACTED] signed the Form I-918 Supplement B.

*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. The petitioner has failed to submit a Form I-918 Supplement B signed by a certifying official. Even though counsel claims that Mr. [REDACTED] signed the Form I-918 Supplement and he was appointed as the certifying official by the [REDACTED] Manager, the signature on the Form I-918 Supplement B is illegible and Mr. [REDACTED] name is not listed in Part 2 as the certifying official. Accordingly, the Form I-918 Supplement B is not a law enforcement certification described at section 214(p)(1) of the Act. Although on appeal, counsel and the petitioner state that the official who certified the application had the authority to do so, a statement from the [REDACTED] Manager's Office may not be accepted in lieu of the law enforcement certification required by the statute at section 214(p)(1) of the Act. We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. As the petitioner has failed to provide a Form I-918 Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), he has failed to establish his eligibility for U nonimmigrant classification. Furthermore, even if the petitioner had filed a properly executed Form I-918 Supplement B, he is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

*Claimed Criminal Activity*

In his statement, the petitioner recounted that on September 25, 2010, he and his cousin stopped at a local gasoline station where he was asked by two women for a ride to another town. He agreed and let one of the women drive. When they got on the freeway, one of the women pulled out a knife and threatened him. They drove to their friend's house and picked up a man. The man pulled out a gun and began hitting the petitioner's cousin. They then drove to the country, took the petitioner and his cousin's wallets, and left them there. The petitioner did not report the robbery until March 7, 2011.

The Form I-918 Supplement B that the petitioner submitted is dated September 15, 2011, and contains an illegible signature allegedly of the chief of police, [REDACTED] Washington Police Department (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as robbery in the first degree. In Part 3.3, the certifying official refers to the Revised Code of Washington (R.C.W.) § 9A.56.200, robbery in the first degree, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, and Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner was the victim of robbery in the first degree.

*Robbery under Washington Law is not a Qualifying Crime or Criminal Activity*

Under the Revised Code of Washington, robbery in the first degree occurs when in the commission of a robbery, the suspect "is armed with a deadly weapon," "displays what appears to be a firearm or other deadly weapon," or "inflicts bodily injury." Wash. Rev. Code Ann. § 9A.56.200 (West 2013). The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). On appeal, counsel does not address the issue of whether robbery is a qualifying crime at section 101(a)(15)(U)(iii) of the Act and she makes no claim that robbery is substantially similar to any qualifying crime. Although the record indicates that the petitioner was the victim of robbery under R.C.W. § 9A.56.200, that offense is not a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

*Substantial Physical or Mental Abuse*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result and as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that he was the victim of qualifying criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of

the infliction of the harm and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

The petitioner states that he was affected “emotionally and mentally,” he is paranoid when he is in public, and he has nightmares about the robbery. The Form I-918 Supplement B does not indicate that there was any injury to the petitioner, and although the petitioner states that he suffered emotional and mental harm, he does not probatively discuss any permanent or serious harm the incident caused to his appearance, health, or physical or mental soundness. While we do not minimize the petitioner’s victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

*Possession of Information Concerning Qualifying Criminal Activity*

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

*Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity*

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. In addition, at Part 4.5, the certifying official noted that the petitioner’s helpfulness is “questionable,” because he “would not meet with officers because he had a warrant for his arrest” and he did not file a police report until six months after the “alleged crime.”

*Conclusion*

As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, he is ineligible for U nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must be denied. In addition, the petitioner has not established that he was the victim of qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of his victimization, that he possesses information concerning qualifying criminal activity, or that he has been helpful to law enforcement authorities.

(b)(6)

*NON-PRECEDENT DECISION*

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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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.