

(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **FEB 26 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:

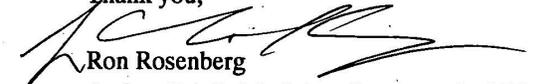


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director (the director) revoked approval of the immigrant visa petition after properly notifying the petitioner 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 revoked approval of the petition on the basis that the law enforcement certification (Form I-918 Supplement B) supporting his Form I-918 application was withdrawn by the certifying agency. On appeal, counsel submits a brief and additional testimonial and documentary evidence.

Applicable Law

U nonimmigrant classification may be granted to an alien who demonstrates, in pertinent part, that he or she “possess[es] information concerning [qualifying] criminal activity” and “has been helpful . . . to a Federal, State, or local law enforcement official . . . investigating or prosecuting [qualifying] criminal activity.” Section 101(a)(15)(U)(i)(II), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II), (III).

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(h) states, in pertinent part, the following:

(h) *Revocation of approved petitions for U nonimmigrant status –*

* * *

(2) *Revocation on notice.*

(i) [United States Citizenship and Immigration Services (USCIS)] may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing. . . .

(ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given that evidence will be within the sole discretion of USCIS. . . .

Regarding the application requirements 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 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. . . .

Pursuant to the regulations, the petitioner also must show that "since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). This regulatory provision "exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner "only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

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; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States on January 22, 2008 after he was paroled in to help with the criminal investigation of his kidnapping. On August 5, 2008, the petitioner filed a Form I-918 U petition along with a *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The petition was approved on August 24, 2009.

In April 2011, USCIS received a letter from [REDACTED] District Attorney's Office, withdrawing the office's Form I-918 Supplement B. [REDACTED] reported that following the preliminary hearing of one of the perpetrators, the District Attorney's Office received information that suggested the petitioner and his brother were involved with illegal narcotics activities prior to the petitioner's kidnapping despite the petitioner's testimony under oath during the criminal proceedings regarding his kidnapping that he had no involvement with illegal drug use or sales. The District Attorney's Office confronted the petitioner with a Drug Enforcement Agency (DEA) report that contained details of the petitioner's illegal activities and recorded statements during the drug transaction. The petitioner's brother admitted his knowledge of the illegal narcotics activity when confronted with a recorded telephone call. [REDACTED] also noted that the petitioner admitted that he went by the name of [REDACTED] which was the name of the suspect in the DEA investigation and the contact person for the drug transaction that was recorded in the call to the petitioner's brother. Nonetheless, the petitioner denied any involvement in illegal drug activity. [REDACTED] stated reported that in light of the inconsistencies, the petitioner's credibility as a witness was called into question and the case against one kidnapper was dropped, and the previous convictions against the other kidnappers are being challenged by way of motion.

The director issued a Notice of Intent to Revoke (NOIR) approval on September 20, 2011, and notified the petitioner that because the certifying agency had withdrawn the Form I-918 Supplement B, the petitioner had failed to demonstrate that he had continued to be helpful to law enforcement as required. The petitioner, through counsel, submitted a timely response and claimed that he did not withhold any information, nor did he make any inconsistent statements. Counsel also asserted that there was no indication of how the drug case discussed in the District Attorney's letter was related to the kidnapping charge. The director found the petitioner's response insufficient to overcome his proposed ground for revocation, and he revoked approval of the petition on April 16, 2012.

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 revoke the petition, and the appeal will be dismissed.

Analysis

The petitioner has failed to establish that he has continued to be helpful to law enforcement. The record contains a law enforcement certification that was signed by Investigator [REDACTED] District Attorney's Office (certifying official) on July 15, 2008. The certifying official indicated at Part 4 that the petitioner possessed information about the criminal activity, was helpful in the investigation of the qualifying criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of the criminal activity. However, after the petition for U nonimmigrant status had been approved, USCIS received a letter from Deputy District Attorney [REDACTED] District Attorney's Office indicating that the

petitioner had ceased to be helpful to law enforcement and that the District Attorney's Office was withdrawing their Form I-918 Supplement B.

The regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that "since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested." Here, although the certifying official initially affirmed the petitioner's helpfulness at Part 4.2 – 4.4 of the Form I-918 Supplement B, the certifying agency's withdrawal of the certification demonstrates that the petitioner failed to provide ongoing cooperation to law enforcement authorities after the law enforcement certification was provided.

On appeal, counsel contends that the petitioner did not withhold information from the District Attorney's Office and that the letter from the District Attorney's office withdrawing the Form I-918 Supplement B fails to establish that he withheld information. In support of her argument, counsel asserts that the petitioner never had a grounded telephone line, and submits an affidavit from the petitioner in which he states that he was not involved in dealing drugs and that he did not have a landline. Counsel and the petitioner fail to meaningfully address the information in the District Attorney's letter which indicated that the petitioner was involved in the illegal drug transaction and that as a result of the petitioner's refusal to acknowledge or explain his involvement, the petitioner's credibility was called into question and the prosecution of the kidnappers was compromised.

The petitioner has failed to overcome the grounds for revocation of the petition. While the regulation at 8 C.F.R. § 214.14(b)(3) provides for an exemption from the helpfulness requirement in the case of a petitioner who is under the age of 16, incapacitated, or incompetent, there is no evidence that these factors are present in the instant matter or that the certifying agency's requests were unreasonable. The certifying agency's withdrawal of the Form I-918 Supplement B provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to provide sufficient evidence that he had continued to be helpful to law enforcement. *See* 8 C.F.R. § 214.14(h)(2)(i)(A). In sum, the preponderance of the relevant evidence submitted below and on appeal fails to demonstrate that the applicant has provided ongoing cooperation to law enforcement authorities as required under section 101(a)(15)(U)(i)(III) of the Act. Accordingly, we affirm the director's finding that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity.

Furthermore, as the certifying agency has withdrawn their Form I-918 Supplement B, the petitioner no longer meets the requirement at section 214(p)(1) of the Act that he have a certification from a law enforcement agency that he is being helpful to law enforcement in the investigation or prosecution of a qualifying criminal activity. As such, he is no longer eligible for U nonimmigrant status. USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. Without the requisite certification, the petitioner cannot establish that he meets the eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act.

Conclusion

Pursuant to the regulation at 8 C.F.R. § 214.14(b)(3), the relevant evidence fails to establish that the petitioner provided ongoing cooperation to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

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 approval of the petition remains revoked.