

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



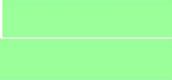
U.S. Citizenship
and Immigration
Services

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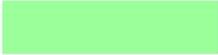
Date: **MAY 09 2013**

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:

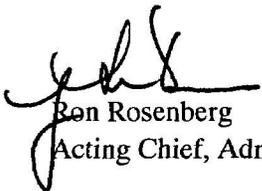
SELF-REPRESENTED

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 the petitioner did not submit the requisite law enforcement certification (Form I-918 Supplement B) when initially filing his petition, or establish the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

On appeal, the petitioner submits a statement and an unsigned Form I-918 Supplement B.

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;

(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[.]¹

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).

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

¹ 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 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 Indonesia who last entered the United States on February 19, 2000, on a B-2 nonimmigrant visa with authorization to remain until August 18, 2000. On July 3, 2012, the petitioner filed the instant Form I-918 U petition without the requisite Form I-918 Supplement B. On August 17, 2012, the director denied the petition due to the lack of initial evidence.² The AAO notes that the record contains an unsigned and undated Form I-918 Supplement B. The petitioner timely appealed.

On appeal, the petitioner states he is desperate to reside in the United States with his family. He claims that he suffered physical and mental abuse in Indonesia, and he was a victim of an incident that occurred in 2008 in Philadelphia.

Law Enforcement Certification

The petitioner was required to submit a Form I-918 Supplement B as initial evidence that conformed to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i). The Form I-918 Supplement B that the petitioner submitted, however, is insufficient, as it is neither signed nor dated by the certifying official. Accordingly, the Form I-918 Supplement B submitted by the petitioner in support of his Form I-918 U petition is not a law enforcement certification described at section 214(p)(1) of the Act. In addition, the petitioner's statement on appeal cannot 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, U.S. Citizenship and Immigration Services (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 was helpful to law enforcement authorities in the investigation of qualifying criminal activity and consequently cannot meet any of the eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

Conclusion

² In addition, the director noted in the denial letter that the petitioner had failed to establish that he met the criteria at subsections 101(a)(15)(U)(i)(I)–(IV) of the Act, and he failed to submit a signed victim statement and evidence of his admissibility to the United States.

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As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, he has not overcome this portion of the director's denial decision and cannot meet any of the eligibility criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(I)-(IV) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must be denied.

As in all visa petition proceedings, the petitioner bears the burden of proving his 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.