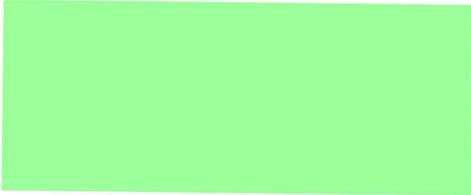


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

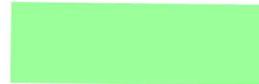


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OCT 25 2013

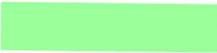
Office: VERMONT SERVICE CENTER

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. 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.

Applicable Law

U nonimmigrant classification may be granted to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain qualifying criminal activity and who also demonstrate, among other things, that they have been, are being, or are 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 [qualifying] criminal activity." Section 101(a)(15)(U)(i)(I), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I), (III).

To establish a U nonimmigrant petitioner's helpfulness to law enforcement, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) further prescribes:

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.

Facts and Procedural History

The petitioner is native and citizen of Guatemala, who claims to have entered the United States without inspection, admission or parole in September 1985. On November 17, 2011, the petitioner filed a Form I-918 U petition which included a Form I-918 Supplement B, signed on May 13, 2011. Because the Form I-918 Supplement B was not signed within the six months immediately preceding the filing of the Form I-918, the director subsequently denied the petition due to the lack of initial evidence. On appeal, counsel submits a short brief in which he asserts that the Form I-918 Supplement B was timely filed and that the filing met the statutory requirements.

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 filed her Form I-918 U petition on November 17, 2011 and was required to submit a Form I-918 Supplement B, dated within the six months immediately preceding that date. 8 C.F.R. § 214.14(c)(2)(i). The Form I-918 Supplement B the petitioner submitted, however, did not conform to the regulations as it was dated more than six months from the filing of the Form I-918 U petition.

On appeal, counsel claims that the Form I-918 Supplement B was filed within the prescribed regulatory period because 8 C.F.R. § 103.5a(b) allows three days to be added to the prescribed period for filing when a petitioner is served notice of a required act by mail. However, 8 C.F.R. § 103.5a(b) does not apply to this case as there was no service by mail of a notice to the petitioner of any right or requirement to act prior to her filing of the Form I-918 U petition. In the alternative, counsel correctly asserts that the statute itself does not require the Form I-918 Supplement B to be signed within six months of the filing of the Form I-918 U petition. Counsel concedes, however, that this is a regulatory requirement. USCIS lacks the authority to ignore or waive the regulatory requirement for timely-dated certification at 8 C.F.R. § 214.14(c)(2)(i).

We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, without the requisite certification, the petitioner cannot establish that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity as required under section 101(a)(15)(U)(i)(III) of the Act.¹ The petitioner has not complied with the regulation at 8

¹ Because the petitioner has failed to meet the requirement for helpfulness to law enforcement, we do not reach the other requisite grounds in this decision.



C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. For this reason, her appeal must be dismissed and her petition must remain denied. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

Conclusion

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 appeal is dismissed. The petition remains denied.