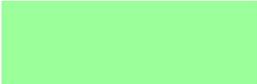


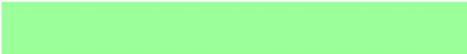


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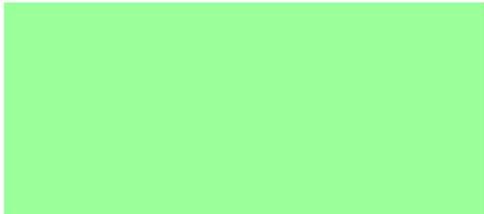


Date: **DEC 19 2014** Office: VERMONT SERVICE CENTER FILE: 

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,



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 an original Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) at the time of filing the nonimmigrant U petition (Form I-918 U petition). On appeal, the petitioner through counsel asserts that the original Form I-918 Supplement B was previously submitted and now provides a new certification.

Applicable Law

Section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. 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).

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 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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in May 1996 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on September 20, 2012 with a color photocopy of the Form I-918 Supplement B, dated September 17, 2012. The director issued a Request for Evidence (RFE), notifying the petitioner that the Form I-918 Supplement B submitted was a photocopy and requesting an original certification, as well as other evidence. The petitioner responded and submitted another copy of the Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit an original Form I-918 Supplement B as initial evidence. The petitioner has timely appealed the denial of the Form I-918 U petition.

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

The petitioner failed to submit a properly executed Form I-918 Supplement B signed by a certifying official from a certifying agency, which is required initial evidence when filing a Form I-918 U petition. 8 C.F.R. § 214.14(c)(2)(i). The submission of a Form I-918 Supplement B is required by statute at section 214(p)(1) of the Act ("The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification . . ."). As provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 U petition "must include" as initial evidence a Form I-918 Supplement B "signed by a certifying official within the six months immediately preceding the filing of Form I-918." The petitioner here filed a color photocopy of the Form I-918 Supplement B with her petition and submitted another photocopy of the same in response to the director's RFE for an original certification.

On appeal, counsel asserts that the original Form I-918 Supplement B was filed with the initial petition and is already in the record. However, upon review, the record of proceedings contains no original of the certification, dated September 17, 2012, which was initially submitted with the petition. The certification initially provided with the Form I-918 U petition bears on an original USCIS receipt date stamp of September 20, 2012 and is on its face a color photocopy that does not contain the original signature of the certifying official. Accordingly, the petitioner failed to file mandatory initial evidence with her petition as required by statute and regulation.

Although the petitioner on appeal now submits a second Form I-918 Supplement B that contains an original signature of the certifying official, it was signed on February 4, 2014, after the filing of the petitioner's nonimmigrant U petition on September 20, 2012. Consequently, this second certification does not satisfy

the regulation at 8 C.F.R. § 214.14(c)(2)(i), requiring the certification to have been filed with the initial petition and signed within the six-month period preceding the filing of the petition. Although we recognize the difficulties that some individuals face in obtaining a properly executed Form I-918 Supplement B, we lack authority to waive the requirements for a certification under the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

Accordingly, as the petitioner did not submit the required and properly executed Form I-918 Supplement B with her petition, she has failed to conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and she, therefore, has failed to establish eligibility 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

The petitioner did not comply with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of initial evidence at the time she filed her petition as required. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied. The dismissal of this appeal is without prejudice to the petitioner filing a new nonimmigrant U petition now that she has obtained the required law enforcement certification.

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 ●tiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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