



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 23 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 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 eligibility criteria for U nonimmigrant classification. On appeal, the petitioner asserts that the documentary evidence in the record as a whole sufficiently satisfies the requirements normally established by the filing of the Form I-918 Supplement B.

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 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 [petitioner] 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."

Facts and Procedural History

The petitioner is a native and citizen of Ecuador who claims to have entered the United States on April 25, 2005 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), on September 17, 2012 with an unsigned and incomplete Form I-918 Supplement B. On October 17, 2013, the director issued a Request for Evidence (RFE) to obtain a signed and complete Form I-918 Supplement B, a personal statement from the petitioner, and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The petitioner responded with additional evidence, including a duplicate copy of a previously submitted letter from the certifying official. However, the director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner appealed the denial of the Form I-198 U petition.

Analysis

We conduct appellate review on a *de novo* basis. A review of the record reveals no error in the director's decision to deny the petition based upon lack of required initial evidence.

The petitioner failed to submit a Form I-918 Supplement B from a certifying agency that was signed by a certifying official, which is required initial evidence when filing a Form I-918 U petition. 8 C.F.R. § 214.14(c)(2)(i). According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), "[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility"

The petitioner's Form I-918 Supplement B was unsigned and incomplete at Part 4.4, which inquires about whether the petitioner has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the claimed criminal activity. The petitioner, however, included a letter from the certifying official, dated August 3, 2012, indicating that the letter was an "addendum" to the certifying agency's U nonimmigrant status certification provided on behalf of the petitioner here. The petitioner contends that the certifying official's letter should be considered the *de facto* certification required to be filed with a Form I-918 U petition.

Section 214(p)(1) of the Act requires that an individual seeking U nonimmigrant classification submit a certification from a law enforcement official investigating the qualifying criminal activity, and federal regulations require that such a certification be "signed by a certifying official within six months immediately preceding the filing of" the petition. 8 C.F.R. § 214.14(c)(2)(i). USCIS has designated the Form I-918 Supplement B as the sole form to be utilized by a certifying agency in issuing such certifications. *See id.* Here, the petitioner's Form I-918 Supplement B does not meet the referenced statutory and regulatory requirements as it was both unsigned and undated by a certifying official. While we empathize with the petitioner as to the difficulties he faced in obtaining a signed Form I-918 Supplement B from the certifying agency, we lack the authority to waive the requirements for the certification at section 214(p)(1) of the Act and in the regulations.

Moreover, contrary to the petitioner's assertions, even we could disregard the requirement of an executed Form I-918 Supplement B, the certifying officer's letter is insufficient as a *de facto* certification, as it fails to satisfy the requirements of a certification under the Act and by regulation. Section 214(p)(1) of the Act requires the certifying law enforcement agency investigating the *qualifying criminal activity* described under 101(a)(15)(U)(iii) to issue the certification. The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires the certification to state that a petitioner "has been a victim of *qualifying criminal activity* that the certifying agency is investigating or prosecuting." (Emphasis added). In the instant matter, the certifying agency's letter does not set forth the relevant qualifying criminal activity that it investigated or prosecuted, and does not indicate that the petitioner was the victim of such activity as required. Furthermore, the certifying agency itself refers to the letter as an addendum to the certifying agency's certification, rather than as the certification itself. The certification referenced in the letter is not part of the record for our review. There is no evidence that the unexecuted Form I-918 Supplement B in the record is the certification referenced by the certifying agency or that it was ever reviewed and approved by the agency.

Accordingly, as the petitioner did not submit the required Form I-918 Supplement B signed by a certifying official, he has failed to conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and he, 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 he filed his petition as required. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.¹

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.

¹ The record indicates that director found the petitioner inadmissible to the United States, but his decision did not discuss the issue. As we are dismissing the petitioner's appeal for failure to submit initial evidence, we also will not address this issue.