



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: FEB 19 2014 Office: VERMONT SERVICE CENTER [Redacted]

IN RE: PETITIONER: [Redacted]

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:

SELF-REPRESENTED

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

Page 2

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), nor did he establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, the petitioner submits a personal statement, a Form I-918 Supplement B, and additional evidence.

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: . . . manslaughter; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, 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 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.

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 entered the United States on May 1, 1996 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) on May 7, 2013, without the Form I-918 Supplement B. The director subsequently denied the Form I-918 U petition because the petitioner failed to submit a properly executed Form I-918 Supplement B, and he did not meet any of the eligibility criteria for U nonimmigrant classification. The director also noted that the petitioner failed to submit a statement or a

Page 5

copy of his passport or border crossing card. The petitioner appealed the denial of the Form I-198 U petition.

On appeal, the petitioner submits a Form I-918 Supplement B that is not signed by a person recognized as a certifying official and explains that he was shot in the head and has suffered greatly.

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 based upon lack of required initial evidence.

The petitioner filed his Form I-918 U petition on May 7, 2013 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). Although on appeal the petitioner submitted a Form I-918 Supplement B, it was not submitted as initial evidence with his Form I-918 U petition.¹ 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 . . .”. In addition, the Form I-918 Supplement B, dated June 18, 2013, was not signed by any certifying official or signed within the six months preceding the May 7, 2013 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). Accordingly, the Form I-918 Supplement B is not a law enforcement certification described at section 214(p)(1) of the Act. We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. As the petitioner has failed to submit required initial evidence with his Form I-918 U petition and provide a Form I-918 Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), he has failed to establish his eligibility for U nonimmigrant classification and his Form I-918 U petition must remain denied. Furthermore, even if the petitioner had filed a properly executed Form I-918 Supplement B, he is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

Claimed Criminal Activity

In his statement, the petitioner recounted that he was shot in the head by six African Americans. He claims that it was a “hate crime” against Latinos.

The Form I-918 Supplement B that the petitioner submitted was not signed but was dated June 18, 2013. The criminal activity of which the petitioner was a victim at Part 3.1 is listed as manslaughter and “shot in the head.” In Part 3.3 and 3.5, the petitioner states he filed a report with the [REDACTED] Virginia, Police Department and they are still investigating the criminal activity. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, he states he was in the hospital for one week after emergency surgery to remove the bullet in his head.

¹ The petitioner submitted his appeal on July 11, 2013.

Victim of Qualifying Criminal Activity

The crime of manslaughter is listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act; however, there is no evidence that law enforcement authorities investigated or prosecuted the criminal activity of manslaughter. While the record indicates that the petitioner was shot in the head; without evidence that law enforcement authorities detected, investigated, or prosecuted manslaughter or any other qualifying crime against the petitioner, he has not established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

The petitioner states he still suffers from trauma and pain from being shot in the head. He claims that he has a scar on the front of his face and head from the surgery to remove the bullet. While the petitioner indicated that he is suffering mentally, there is no supporting documentation showing a specific diagnosis of any mental health condition from which he may be suffering. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, he has also failed to establish that he possesses information concerning qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. *See also* section 214(p)(1) of the Act.

Jurisdiction

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

Admissibility

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), in order to waive a ground of inadmissibility. The director noted that the petitioner did not provide evidence of a valid passport or border crossing card. Therefore, the petitioner may be inadmissible under section 212(a)(6)(A)(i) (present without being admitted) and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act.

Conclusion

The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. 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. In addition, the petitioner has not established that he was the victim of qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of his victimization, that he possesses information concerning qualifying criminal activity, that he has been helpful to law enforcement authorities, or that the criminal activity violated the laws of the United States or occurred in the United States. 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 new 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), and that cures the other deficiencies noted in the director's denial.

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. Accordingly, the appeal will be dismissed.

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