

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

(b)(6)

[REDACTED]

Date: **MAR 18 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:

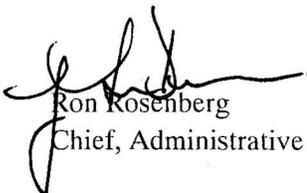
SELF-REPRESENTED

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 Kosenberg
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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U 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 requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The director also noted that the petitioner did not establish that she was admissible to the United States. On appeal, the petitioner submits a statement 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: . . . sexual assault; abusive sexual contact; . . . 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.

In addition, 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 June 28, 2002 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on March 13, 2012 with an accompanying Form I-918 Supplement B. The Form I-918 Supplement B listed the victim as the petitioner's daughter and it was not signed or dated by a person recognized as a certifying official. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B, and she did not meet any of the eligibility criteria for U nonimmigrant classification.

The director also noted that the petitioner failed to establish her admissibility to the United States. The petitioner appealed the denial of the Form I-198 U petition.

On appeal, the petitioner states that the Chandler, Arizona police officer refused to sign the Form I-918 Supplement B because he said he did not have authorization to complete the form. She submits police records from the Chandler, Arizona Police Department in support of her case.

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 has failed to submit a Form I-918 Supplement B from a certifying agency and signed by a certifying official. 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 . . .”. A statement from the petitioner and police records from the Chandler, Arizona Police Department may not 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, 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 provide a Form I-918 Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), she has failed to establish her eligibility for U nonimmigrant classification. Furthermore, even if the petitioner had filed a properly executed Form I-918 Supplement B, she is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

Claimed Criminal Activity

In her statement, the petitioner recounted that over 10 years, she was physically abused by the father of her children. She finally left him and began dating another man who sexually molested her daughter. She reported her boyfriend to the police and he is now in jail.

The Form I-918 Supplement B that the petitioner submitted was not signed or dated, and it indicates that the petitioner's daughter is the victim. The criminal activity of which the petitioner's daughter was a victim is listed as abusive sexual contact and sexual assault. In Part 3.3, the criminal activity that was investigated or prosecuted is child molestation. Parts 3.5 and 3.6, which ask for descriptions of the criminal activity and any known or documented injuries, were left blank.

Victim of Qualifying Criminal Activity

The statute and regulations require a law enforcement certification to verify the petitioner's victimization and eligibility under subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The law enforcement certification must include a statement that the petitioner “has

been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). Although the regulatory definition of a victim includes parents of a direct victim under 21 who is incompetent or incapacitated, such parents must still be identified on the law enforcement certification as victims. See 8 C.F.R. § 214.14(a)(14)(i); (c)(2)(i).

In this case, the Form I-918 Supplement B identifies the petitioner's daughter as the victim in Part 1, and does not address the petitioner's involvement in the criminal case. Moreover, even though the petitioner's daughter was 15 at the time of filing the Form I-918, the petitioner is not identified anywhere on the law enforcement certification. Therefore, the petitioner has not established the requisite victimization.

Substantial Physical or Mental Abuse

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, she has also failed to establish that she suffered substantial physical or mental abuse as a result and as required by section 101(a)(15)(U)(i)(I) of the Act. 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 explains that she was with the father of her children for 10 years, and during that time he was violent with her. In her statement, [REDACTED], the petitioner's aunt, indicates that the petitioner was physically and emotionally abused by her husband for years. In his statement, [REDACTED], the petitioner's friend, states that the petitioner is "afraid of her husband and fears for her life." In her letter, [REDACTED], a counselor, indicates that the petitioner sought counseling for the trauma she experienced while in a domestic violent relationship. The petitioner claims that after she left the father of her children, she started dating another man, who molested her daughter. [REDACTED] notes that the petitioner suffered a lot when she separated from her husband and became involved with her boyfriend who sexually abused her daughter.

While [REDACTED] indicated that the petitioner was attending counseling, she did not provide a specific diagnosis of any mental health condition from which the petitioner may have suffered. Although the letters of support indicate that the petitioner suffered emotional and physical abuse, they do not probatively discuss any permanent or serious harm the incident(s) caused to her appearance, health, or physical or mental soundness. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that she 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, she has also failed to establish that she possesses information concerning such 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, she has also failed to establish that she 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.

Admissibility

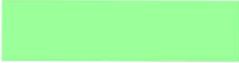
The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant 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 in his decision that the petitioner did not establish her admissibility to the United States, and she has not filed a Form I-192. The record establishes and the petitioner admits that she entered the United States on June 28, 2002 without inspection. Therefore, the petitioner is inadmissible under section 212(a)(6)(A)(i) (present without being admitted) 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 her petition must be denied. In addition, the petitioner has not established that she suffered substantial physical or mental abuse as a result of her victimization, that she possesses information concerning qualifying criminal activity, or that she has been helpful to law enforcement authorities. 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).

(b)(6)

NON-PRECEDENT DECISION



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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.