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)

Date: MAR 2 4 2014 Office: VERMONT SERVICE CENTER

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 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.

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) listing him as the victim. On appeal, counsel submits a brief, additional evidence, and documents already included in the record.

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 --
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> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
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> (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;
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> ***
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> (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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as

defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.][1]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

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

[1] The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 3013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

> 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 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 February 7, 1996 without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying Form I-918 Supplement B on November 27, 2012. On January 29, 2013, the director issued a Request for Evidence (RFE) that the petitioner submit a completed Form I-918 Supplement B in his own name with an original signature of the certifying official. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the director erred in denying the petitioner's Form I-918 U petition because he is "standing in the place of [his] minor U.S. Citizen son . . . who was the victim of a felony crime." He states that the petitioner was not listed as the victim on the Form I-918 Supplement B but he is recognized as the victim's parent. In addition, counsel contends that denying the instant petition is "a violation of the clear intent of the INA statute."

Claimed Criminal Activity

In his statements, the petitioner recounted that on July 7, 2011, his U.S. citizen son, who was 13 years of age, and his friend were assaulted and robbed by two boys. After the assault, they went into a nearby store and called the police. The police arrived, took their statement and drove them home.

The initial Form I-918 Supplement B that the petitioner submitted was signed by Commander of Investigations , on June 28, 2012. The Form I-918 Supplement B identified the petitioner's son, , as the victim of robbery in the second degree, indicated that he was punched in the face and head, he possessed information concerning the criminal activity, and he was helpful in the investigation. The petitioner was not listed anywhere on the initial Form I-918 Supplement B. The petitioner also obtained a second Form I-918 Supplement B that was signed by on April 30, 2013. identified the petitioner's son as the victim at Part 1, and at Part 3.5 he indicated that the petitioner is the victim's parent and the victim resides with him.

The director found that for the petitioner to be eligible as a U-1 nonimmigrant, he must submit a Form I-918 Supplement B listing him as the victim. Although the petitioner submitted another Form I-918 Supplement B as described above, the second Form I-918 Supplement B did not list the petitioner as the victim.

The Form I-918 Supplement B

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

Here, neither Form I-918 Supplement B establishes the petitioner's victimization. The first Form I-918 Supplement B does not name the petitioner as the victim in Part 1 or anywhere else on the certification, and the second Form I-918 Supplement B was signed after the filing of the Form I-918 U petition. *See* 8 C.F.R. § 214.14(c)(2)(i) (requiring the Supplement B to have been signed by the certifying official within the six months preceding the filing of the Form I-918 U petition). Notwithstanding these deficiencies, the petitioner does not, as counsel claims, qualify for U nonimmigrant status "derivatively" as the parent of a victim under the regulation at 8 C.F.R. § 214.14(a)(14)(i).

The regulatory definition of "victim" includes parents of a direct victim under the age of 21 if "the direct victim is . . . incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity." Neither Form I-918 Supplement B establishes that the petitioner's son was incompetent or incapacitated and therefore unable to provide information to the certifying agency or be helpful in the investigation of the crime against him. In both certifications, the certifying official clearly indicated at Part 3.5 that the petitioner's son provided

information about the criminal activity, stating at Part 5 that the petitioner's son assisted in "the description of both the subjects" and "an extensive area check." The certifying official also stated at Part 4.2 that the petitioner's son was helpful to the investigation. Accordingly, the petitioner is not an indirect victim of the robbery perpetrated against his son, as he has not demonstrated that his son, who was the direct victim of the crime, was incompetent or incapacitated such that he could not participate in the investigation of the criminal activity against him.

Counsel contends that denying the petitioner's application is "a violation of the clear intent of the INA statute." Counsel's argument regarding congressional intent is improperly before the AAO, as we lack authority to waive the requirements of 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).

Although not raised by the director in the denial decision, even if the petitioner had submitted a properly executed Form I-918 Supplement B, his request for U nonimmigrant status would not be approvable because the criminal activity investigated is not one of the statutorily enumerated crimes or substantially similar to one.

The certifying official listed robbery in the second degree under section 9A.56.210 of the Washington Criminal Code as the criminal activity investigated or prosecuted. Robbery is not listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Counsel has presented no analysis of the criminal statutes involving robbery and felonious assault under Washington State law to demonstrate that the nature and elements of the two crimes are substantially similar. Although counsel claims below that the criminal activity of which the petitioner's son was a victim involved a felonious assault, as stated previously, the inquiry is not fact-based, but a comparison of the nature and elements of the statutes in question. Furthermore, the certifying official does not, on either Form I-918 Supplement B, indicate that the crime of felonious assault was investigated. Consequently, had USCIS reached the merits of the petitioner's claim to U nonimmigrant status eligibility, the record would not support a finding that the crime committed against the petitioner's son was substantially similar to any criminal activity listed at section 101(a)(15)(U)(iii) of the Act.[2]

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[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Conclusion

The petitioner has not submitted the required law enforcement certification at section 214(p)(1) of the Act, as described at 8 C.F.R. § 214.14(c)(2)(i). He has also failed to demonstrate that he meets the definition of an indirect victim at 8 C.F.R. § 214.14(a)(14)(i), or that his son was the victim of a qualifying crime. 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.

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.