

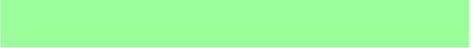


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: NOV 24 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)

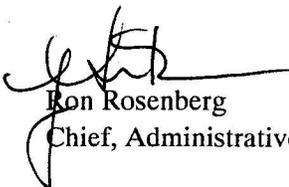
ON BEHALF OF PETITIONER:  


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) at the time of filing the nonimmigrant U petition (Form I-918 U petition). On appeal, the petitioner through counsel requests reconsideration of the denial of the petition and submits a properly executed Form I-918 Supplement B and a letter from the certifying official.

*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 November 2006 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on October 8, 2013 with an unsigned Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner has appealed the denial of the Form I-198 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.

On appeal, the petitioner states that when she filed her Form I-918 U petition she explained in a letter to the director that she was filing the petition without a signed Form I-918 Supplement B because she needed to preserve a pre-October 11, 2013 filing date, as that was the date her daughter would turn twenty-one. According to the petitioner, the only reason that she did not have a signed Form I-918 Supplement B from the certifying agency, the Equal Employment Opportunity Commission (EEOC) in [REDACTED] Alabama, was because of the government shutdown, and she was expecting the director to issue a Request for Evidence (RFE) to obtain the required certification. The petitioner submits a letter from the certifying official, dated November 22, 2013, who states that the petitioner's Form I-918 Supplement B was recommended for approval by his office prior to September 30, 2013; "[h]owever, due to the government shutdown, the EEOC's Headquarters Office of the General Counsel was unable to process the request immediately." Along with his letter, the certifying official submits a second Form I-918 Supplement B signed by him on November 22, 2013, a date subsequent to the filing of the Form I-918 U petition.

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 did not file her Form I-918 U petition with required initial evidence, and the Form I-918 Supplement B submitted on appeal was not signed within the six-month period preceding the filing of her nonimmigrant U petition. Although we understand the petitioner's reasons for filing her Form I-918 without the required certification, 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).

The director also did not err by denying the petition without first issuing an RFE. Neither the statute nor the regulations governing the U nonimmigrant classification require the issuance of an RFE where eligibility has not been established at the time a petition is filed. 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 . . . .” Here, the director properly exercised his discretion and denied the Form I-918 U petition without first issuing an RFE because the petitioner failed to submit required initial evidence.

Accordingly, the petitioner’s filing of a properly executed Form I-918 Supplement B subsequent to USCIS’s receipt of her U petition fails to conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for required initial evidence, and she, therefore, has failed to establish her 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 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.