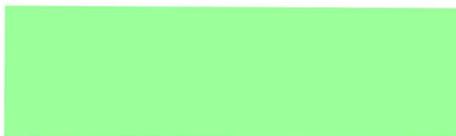


(b)(6)

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



Date: **OCT 22 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. The director further found that the petitioner failed to submit a personal statement and evidence of her admissibility as required. On appeal, the petitioner requests reconsideration of the denial of the petition and submits a second law enforcement certification.

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 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 El Salvador. The record indicates the petitioner initially entered the United States without admission, inspection or parole in 2003, but departed the country in March 2014. She last entered the United States again on April 13, 2014, when she sought admission to the United States. The petitioner was placed into removal proceedings before an immigration judge on June 16, 2014. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), on February 26, 2013, along with a photocopy of a Form I-918 Supplement B. The director denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner timely appealed the denial of the Form I-198 U petition.

Analysis

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 has failed to submit a properly executed Form I-918 Supplement B from a certifying agency and 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 Form I-918 Supplement B that the petitioner submitted below does not bear the certifying official's signature and was

incomplete at Part 3.1, which requires the certifying official to identify the qualifying criminal activity. The certification therefore does not comply with the regulatory requirements of 8 C.F.R. § 214.14(c)(2)(i) for initial evidence.

Although the petitioner submitted police records to demonstrate that she was a victim of qualifying criminal activity, these may not be accepted in lieu of the law enforcement certification required by the statute at section 214(p)(1) of the Act. Additionally, the records submitted by the petitioner indicate that the certifying agency specifically declined to certify the petitioner's Form I-918 Supplement B. While we recognize the difficulties that a petitioner may face in obtaining a law enforcement certification, we lack the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act.

On appeal, the petitioner submitted a second Form I-918 Supplement B. However, this certification is not signed by a certifying official and does not identify the certifying official, the certifying agency, or the qualifying criminal activity at issue as required. Thus, this certification also fails to comply with the requirements of 8 C.F.R. § 214.14(c)(2)(i). Moreover, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Here, as the U petition was not accompanied by a properly executed Form I-918 Supplement B, the petitioner is unable to establish her eligibility as of the time of the filing of her U petition.

As the petition here was not accompanied by a properly executed Form I-918 Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, the petitioner 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 be 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 As noted, the record indicates that director also determined that the petitioner had failed to submit a personal statement and to establish her admissibility to the United States. However, as the petitioner did not discuss these issues on appeal and we are dismissing the appeal for failure to submit initial evidence, we need not address such issues further.