

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: **OCT 29 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:

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

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 Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) as required, and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. The director further noted that the petitioner had failed to submit a personal statement and also found the petitioner ineligible for U nonimmigrant status because the petitioner was inadmissible to the United States and did not submit a Form I-192 for a waiver of his inadmissibility. On appeal, the petitioner¹ requests reconsideration of the denial of the petition because he has suffered trauma for which he receives medical treatment. On the Notice of Appeal (Form I-290B) the petitioner indicated that he would submit a brief to the AAO within 30 days, or by January 5, 2014. As of this date, however, the AAO has not received any supplemental evidence.

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:

¹ Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, it is a photocopy only and is dated prior to the denial of the director's decision. The record does not contain a new, fully executed Form G-28 filed with or after the filing of the Form I-290B, as required by regulation and as set forth in the instructions to the Form I-290B. See 8 C.F.R. § 292.4(a). In a facsimile sent October 7, 2014, the AAO afforded counsel 10 calendar days to provide a new Form G-28 to the AAO, but one has not been submitted. Accordingly, we deem the petitioner to be self-represented.

(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 Kenya who claims to have last entered the United States as a visitor on February 20, 2000. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), on August 27, 2013. 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-918 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 here failed to submit a properly executed Form I-918 Supplement B signed by a certifying official from a certifying agency, 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”

As the petitioner did not submit the required Form I-918 Supplement B, he has failed to conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and he, therefore, has failed to establish 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). While we empathize with the petitioner as to the difficulties he faces due to his medical concerns, we lack the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act.

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 he filed his petition as required. 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.²

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.

² The record indicates that director found the petitioner inadmissible to the United States. However, as the petitioner did not raise this issue on appeal and we are dismissing the petitioner's appeal for failure to submit initial evidence, we need not address this issue further.