

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: **SEP 09 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. On appeal, the petitioner indicates that a brief or other evidence will be submitted within 30 days. As of the date of this decision, however, the AAO has received no additional statements or evidence.

Applicable Law

Section 101(a)(15)(U) of the Act 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 who claims to have entered the United States on July 27, 1993 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), on August 2, 2011 without a properly executed Form I-918 Supplement B. The certifying official left blank questions 1, 3, and 4 of Part 4 of the Form I-918 Supplement B, dated July 7, 2011¹, which inquires about the petitioner's helpfulness relating to the prosecution or investigation of the qualifying criminal activity. On August 14, 2012, the director issued a Request for Evidence (RFE), including, among other things, a statement from the certifying official indicating that the petitioner has been or is being or is likely to be helpful to the investigation or prosecution of the cited criminal activity; and evidence that the petitioner was a victim of substantial physical or mental abuse as a result of the qualifying criminal activity. The petitioner responded to the RFE on November 14, 2012 with a copy of his previously submitted written statement, a mental health evaluation from licensed psychologist [REDACTED] PhD, computer screen printouts from [REDACTED] and a photocopy of the Form I-918 Supplement B, dated April 22, 2010, in which Part 4 was now executed. On January 8, 2013, the director issued a Notice of Intent to Deny, requesting evidence that the petitioner was the victim of domestic violence as claimed. The petitioner responded by providing brief statements from himself and three other individuals, another copy of the mental health evaluation by Dr. [REDACTED] and records from the [REDACTED] Police Department. The director subsequently denied the petition because the

¹ The Form I-918 Supplement B appears to be a photocopy of the certification, signed and dated April 22, 2010, that was originally submitted with the petitioner's first Form I-918 U petition filed June 3, 2010. The petitioner resubmitted the photocopied Form I-918 Supplement B with the instant petition, but bearing an additional signature in the original by the same certifying official and dated July 7, 2011.

petitioner failed to submit a properly executed Form I-918 Supplement B and thus, failed to meet the eligibility requirements for U nonimmigrant classification. The petitioner appealed the denial of the Form I-198 U petition.

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 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 initial Form I-918 Supplement B that the petitioner submitted was incomplete at Part 4. Although the petitioner responded to the August 14, 2012 RFE with a Form I-918 Supplement B in which Part 4 was completed, that certification was a photocopy of the one already in the record, dated April 22, 2010. The amendments in Part 4 were not made in the original, and were not accompanied by the original signature of the certifying official. Additionally, the regulation specifically requires that the certification be signed by a certifying official within six months preceding the filing of the U petition as initial evidence. Here, the second April 22, 2010 Form I-918 Supplement B, with the newly amended Part 4, predates the amendments and the issuance of the RFE, and was signed well over a year before the filing of the U petition.

The petitioner has submitted a statement, computer records from the court, and supporting reference letters. However, these 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) for initial evidence, he has failed to establish his 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 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 his petition must be 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.