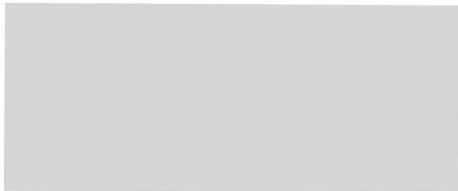




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 17 2015**

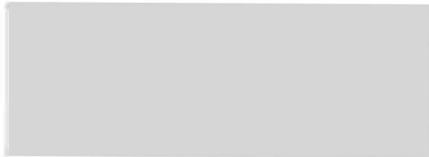
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 failed to establish that he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief and additional evidence.

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 --

- (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);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (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
- (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[.]

Attempted murder is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

* * *

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested[.]

* * *

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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 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).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

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 [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 initially entered the United States on December 23, 2006, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 23, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the

same day. On November 12, 2013, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation and/or prosecution of qualifying criminal activity and that he suffered resultant substantial physical or mental abuse. In addition, the director requested evidence that the individual who signed the Form I-918 Supplement B was recognized as a certifying official. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, although the certifying official indicated that the petitioner was not helpful in the investigation of qualifying criminal activity and he unreasonably refused to provide assistance, the petitioner claims that he was helpful and he was not requested to provide additional assistance by law enforcement.

Claimed Criminal Activity

In his declaration, the petitioner recounted that on December 8, 2009, he was standing in the doorway of his house talking on his cell phone when three men approached him and shot him 12-14 times. He did not know the men nor did they speak to him. The ambulance arrived and he was airlifted to the hospital. While in the hospital, a detective took his statement and gave the petitioner her contact information. When he was released from the hospital, he moved residences and did not provide his new address to the detective.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Police Records Coordinator, [REDACTED] California, Police Department (certifying official), on December 19, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as attempted murder. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 664-187(a) (attempted murder), as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that the petitioner was a victim of an attempted murder. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "suffered 12 gunshot wounds." In Part 4.2, the certifying official indicated "No" to the question about whether the petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity, and further noted at Part 4.4, that the petitioner had unreasonably refused to provide assistance. The certifying official explained that according to the investigating detective, when the petitioner was released from the hospital, he was "uncooperative" and they were "unable to locate him nor [did] he contact [their] department regarding this incident."

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that he has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or

prosecution of the qualifying criminal activity upon which his petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On the law enforcement certification, the certifying official indicated at Part 4 that the petitioner was not helpful in the investigation of the qualifying attempted murder criminal activity and he had unreasonably refused to provide assistance to the certifying agency. In her denial decision, the director stated that because the certifying official indicated in the Form I-918 Supplement B that the petitioner was “uncooperative” when he was released from the hospital, she requested an additional statement from the certifying official indicating that the petitioner was helpful in the investigation of the qualifying crime. However, the petitioner did not provide the requested letter from the certifying official.

Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . 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).” On appeal, the petitioner states that he was interviewed by the police and told them what he knew about the incident. He claims that there was no reason to stay in contact with the police, he was not advised to stay in contact, and there is no evidence that they asked him to do something and he unreasonably declined to provide assistance. In a declaration dated June 9, 2014, petitioner’s counsel explains that when they received the Form I-918 Supplement B indicating that the petitioner was not helpful in the investigation and that he had unreasonably refused to provide assistance to the certifying agency, they attempted to contact the detective in charge of the petitioner’s case, but never received a response. When counsel contacted the certifying official to amend the Form I-918 Supplement B, the certifying official stated she would not amend it. Counsel claims that the petitioner is willing to assist in the investigation and has provided his contact information to the certifying agency.¹ The petitioner asserts that the director erred in not considering the evidence regarding his helpfulness when denying his Form I-918 U petition. However, the Form I-918 Supplement B submitted by the petitioner does not include the requisite certifying official’s endorsement of the petitioner’s helpfulness and she specified that the petitioner unreasonably refused to provide assistance in the criminal activity of which he was victim. We lack the 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 petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act and the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

¹ Counsel relies on an unpublished AAO decision as support to establish that the petitioner did not unreasonably refuse to assist the certifying agency when he was not requested to provide assistance; however, the certifying official in the cited unpublished AAO decision certified the petitioner’s helpfulness unlike the instant case. In addition, while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. §§ 103.3(c); 103.10.

Conclusion

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.