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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
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Washington, DC 20529-2090

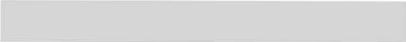


U.S. Citizenship  
and Immigration  
Services



DATE: **AUG 05 2015**



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:

NO REPRESENTATIVE OF RECORD

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](http://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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

*for* 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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) because the petitioner did not submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) at the time of filing the Form I-918 U petition. The director also noted that the petitioner later submitted a Form I-918 Supplement B, but it was not signed by a certifying official and was not dated within six months prior to the filing of the Form I-918 U petition. On appeal, the petitioner submits a statement and additional 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:

- (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[.]

We conduct appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4).

All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

### *Facts and Procedural History*

The petitioner is a native and citizen of St. Vincent and the Grenadines who last entered the United States on April 17, 2011 as a lawful permanent resident. On February 2, 2012, an Immigration Judge ordered the petitioner removed. The Board of Immigration Appeals (Board) dismissed the petitioner's appeal on May 7, 2012, at which point the petitioner's lawful permanent residence terminated.<sup>1</sup> The petitioner filed the instant Form I-918 U petition on July 9, 2013. The director denied the petition because the petitioner did not submit a Form I-918 Supplement B at the time of filing the Form I-918 U petition. The director also noted that, although the petitioner later submitted a Form I-918 Supplement B, it was not signed by a certifying official and was not dated within six months prior to the filing of the Form I-918 U petition.

The director also indicated that the petitioner had not met other eligibility requirements, but that it was unnecessary to discuss those issues because the petition could not be approved in the absence of a properly filed and certified Form I-918 Supplement B. Specifically, the director briefly stated that the petitioner had not replied to a request for biometrics and fingerprints, had not submitted proper identity documents, did not establish that he suffered substantial physical or mental abuse, did not establish that he was helpful in the investigation or prosecution of a qualifying crime, and did not provide evidence of a valid passport.

The petitioner filed a timely appeal.

### *Analysis*

The relevant evidence submitted below and on appeal does not establish that the petitioner is eligible for U nonimmigrant status.

On appeal, the petitioner asserts that his wife attempted to obtain a signature on Form I-918 Supplement B, but the police told her that a police report would suffice and that a Form I-918 Supplement B was not necessary. The petitioner alleges that the police gave his wife incorrect advice, which was a violation of the Sixth Amendment of the Constitution pursuant to the Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010). Additionally, the petitioner contests the director's finding that he was required to file a Form I-918 Supplement B because he filed his Form I-918 U petition after November 1, 2009. The petitioner declares that he could not file his Form I-918 U petition prior to November 1, 2009 because he was a lawful permanent resident until

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<sup>1</sup> 8 C.F.R. §§ 1.2, 1001.1 (stating that lawful permanent resident status terminates upon entry of a final administrative order of removal); *see also Matter of Lok*, 18 I&N Dec. 101, 105 (BIA 1981) (stating that lawful permanent residence terminates "with the entry of a final administrative order of deportation—generally, when the Board renders its decision in the case upon appeal or certification or, where no appeal to the Board is taken, when appeal is waived or the time allotted for appeal has expired.").

May 7, 2012. On appeal, the petitioner states that he did not receive a request for biometrics and fingerprinting and notes that he is in the custody of Immigration and Customs Enforcement. Because the petitioner has not met the requirement of submitting a Form I-918 Supplement B as initial evidence, we will not reach the issue of fingerprinting or the other matters briefly listed, but not fully discussed, in the director's decision.

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 has not submitted a signed Form I-918 Supplement B.

Although the petitioner claims that he received incorrect advice from the police, we do not have authority to waive the requirement that he submit a signed Form I-918 Supplement B. Contrary to the petitioner's argument, the Supreme Court's decision in *Padilla v. Kentucky* does not mandate a finding that incorrect advice from the police violated the petitioner's Sixth Amendment rights. In *Padilla*, the Supreme Court noted that a defendant is entitled to effective assistance of counsel prior to pleading guilty to a crime. The Court held that such effective assistance of counsel includes correct advice regarding whether the defendant's guilty plea will lead to deportation. *Padilla*, 559 U.S. at 374. This holding does not extend to advice from other individuals, such as the police, or to advice given outside the context of entering a plea in a criminal case.

Additionally, although the petitioner correctly notes that he could not file a Form I-918 U petition prior to the termination of his lawful permanent residence on May 7, 2012, this does not change the statutory requirement at section 214(p)(1) of the Act that he submit a signed Form I-918 Supplement B as initial evidence.

The petitioner makes additional claims in his statement on appeal, but those claims do not appear to relate to the director's denial of his Form I-918 U petition. The petitioner states that the decision was in error and provides citations for two cases, *Chen v. USCIS*, 470 F.3d 509, 514 (2d Cir. 2006), and *Wallace v. Gonzales*, 463 F.3d 135, 140-41 (2d Cir. 2006). *Chen* is a decision regarding an application for asylum and *Wallace* relates to an application for adjustment of status. Neither application is at issue here, and the petitioner has not provided any argument or explanation as to the relevance of these cases to his petition for U nonimmigrant status.

Furthermore, the petitioner presents arguments relating to his inadmissibility and whether he was convicted of a crime involving moral turpitude, neither of which are relevant to the director's decision on his Form I-918 U petition. These arguments appear to relate to the director's decision denying his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. We have no jurisdiction to determine whether the director should have favorably exercised his discretion to approve the Form I-192. 8 C.F.R. § 212.17(b)(3). Although we can determine whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-

192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv), such a determination is not necessary in the instant case because the petitioner's Form I-918 U petition remains denied.

The petitioner has not submitted a signed Form I-918 Supplement B. Therefore, he has not established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) 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 required initial evidence with his Form I-918 U petition. Accordingly, the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.