

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 11 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:

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) 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 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. 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 France who became a lawful permanent resident (LPR) on April 20, 2004. The petitioner's LPR status terminated on January 31, 2014, when the Board of Immigration Appeals dismissed his appeal of an Immigration Judge's decision ordering the petitioner removed.¹ The petitioner filed his Form I-918 U petition on July 11, 2014. 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 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 the [REDACTED] Police Department [REDACTED] wrongfully refused to sign his Form I-918 Supplement B due to the petitioner's criminal history. He alleges that the [REDACTED] refusal to sign the Form I-918 Supplement B amounts to obstruction of justice, a qualifying crime, and that he has filed a complaint against the [REDACTED] with the U.S. Attorney's Office in [REDACTED]. The petitioner requests that we postpone our adjudication of his appeal until he receives a response from the U.S. Attorney's Office. He asserts that his delay in submitting the Form I-918 Supplement B is out of his control, that excusing the delay would be in the interest of justice, and that he is likely to establish his eligibility for U nonimmigrant status once he submits a signed Form I-918 Supplement B.

Additionally, the petitioner submits a copy of a letter from the [REDACTED] declining to sign the Form I-918 Supplement B based on the petitioner's criminal history, as well as a copy of the petitioner's complaint letter to the U.S. Attorney's Office.

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."

Although the petitioner claims that the [REDACTED] refusal to sign his Form I-918 Supplement B was wrongful and amounted to the crime of obstruction of justice, we do not have authority to waive the statutory requirement at section 214(p)(1) of the Act that the petitioner submit a signed Form I-918 Supplement B. The petitioner has not submitted a signed Form I-918 Supplement B. Therefore, he

¹ 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.").

has not established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

In his statement, the petitioner cites *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390 (3d Cir. 1999), *amended* (Dec. 30, 1999), as support for his argument that his delay in filing Form I-918 Supplement B should be excused. However, *Chi Thon Ngo* relates to a petition for writ of habeas corpus filed by an individual held in custody after being ordered removed. Although the record reflects that the petitioner filed a petition for writ of habeas corpus based on his continued detention by Immigration and Customs Enforcement following an order of removal, that petition does not relate to our adjudication of the petitioner's Form I-918 U petition. The petitioner has not provided any argument or explanation as to the relevance of *Chi Thon Ngo* to his petition for U nonimmigrant status.

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.