



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-M-C-M-

DATE: DEC. 14, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides 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 . . .

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 . . .

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.”

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in October 2010 without inspection, admission or parole. On January 8, 2013, the Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. On October 30, 2013, the Director issued a request for evidence (RFE) of, among other things, the Petitioner’s helpfulness in the investigation or prosecution of the qualifying criminal activity, aggravated robbery. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility.

The Director denied the petition because the Petitioner did not establish that he has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. The Petitioner timely appealed. On appeal, the Petitioner submits a brief and additional evidence.

III. 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.

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A. Qualifying Criminal Activity

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Assistant Chief/Criminal Investigations Command, [REDACTED] Police Department, [REDACTED] Texas, (certifying official) on July 27, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as aggravated robbery. In Part 3.3, the certifying official listed Texas Penal Code § 29.03 (aggravated robbery) as the statutory citation for 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, he indicated that the Petitioner was “shot during a robbery by an unknown suspect, who grabbed the gold necklace from his neck.” At Part 3.6, which asks the certifying official to describe any injury to the victim, he stated that the Petitioner had a gunshot wound to his abdomen.

B. Helpfulness

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 of the Form I-918 Supplement B that the Petitioner was not helpful in the investigation of the qualifying crime of aggravated robbery. At Part 4.5, the certifying official stated:

On [REDACTED] the [Petitioner] was walking outside of the restaurant where he works to go to his vehicle when two suspects approached him and grabbed his necklace. The [Petitioner] was shot and the males left the scene in a large blue pick-up truck per a witness. The [Petitioner] told paramedics that he was shot by a black male who stole his necklace but the witness reported he was robbed by two white males. The [Petitioner] was mailed a letter on 9/9/08 requesting him to contact investigators since no phone number was provided for him. The [Petitioner] did not call until 1/12/09 regarding property disposition . . . [The Petitioner] provided investigators his address and phone number on 1/23/09. On 7/15/09 [the Petitioner] told investigators there were three men in the truck in the parking lot and only one got out. The two in the truck he believed were white or Hispanic. Only one male approached him and that man was definitely black and was wearing a ski mask. Case is inactive with no leads. . . .

In response to the Director’s RFE seeking a statement from the certifying official to establish the Petitioner’s helpfulness, the Petitioner submitted a personal statement indicating that he was incapacitated from the gunshot wound until [REDACTED] 2009, when he contacted the [REDACTED] Police Department to offer assistance with the case. He stated that he called the police department on January 12, 2009, to try to get his necklace back and learned that that a letter requesting his testimony was sent to him at his old address; on January 23, 2009, he called the investigator to provide information about the incident and left his contact information; and on July 15, 2009, he

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called the investigator and provided as many details about the crime that he could remember. The Petitioner did not provide the requested letter from the certifying official, and the Director denied the petition.

On appeal, the Petitioner submits his medical records, the [REDACTED] Police Department offense report, and a personal statement. The Petitioner reiterates that he was helpful as soon as he got well and he recounts the dates that he contacted the police department to inquire about the investigation. The Petitioner revised his previous statement to indicate that in December 2008 he saw the police officer who responded to the incident and the officer told him to contact the police station for further information about the criminal activity. He recounted that on January 12, 2009, he updated his contact information with the police department; on January 23, 2009, he spoke with Investigator [REDACTED] and provided details about the crime and the physical appearance of the suspects; and on July 15, 2009, he contacted Mr. [REDACTED] to provide additional details. However, he does not provide additional information from the certifying official indicating his helpfulness.

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).” The certifying official has not endorsed the Petitioner’s helpfulness, and as such, he is not able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. The Petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act and, therefore, 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).

IV. 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.

Cite as *Matter of J-M-C-M-*, ID# 14748 (AAO Dec. 14, 2015)