



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF A-S-O-

DATE: DEC. 18, 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, 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[.]

.....

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 entered the United States without inspection, admission, or parole in August 2004. He filed the instant Form I-918, Petition for U Nonimmigrant Status on November 12, 2014, without an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the Form I-918 because the Petitioner did not submit a properly completed Form I-918 Supplement B with the Form I-918. On a motion to reopen to the Director, the Petitioner submitted a Form I-918 Supplement B dated November 20, 2014. However, the Form I-918 Supplement B was not signed within the six-month period preceding the filing of the Form I-918 and, on May 11, 2015, the Director re-denied the Form I-918. The Petitioner timely appealed the denial.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. A full review of the record does not establish the Petitioner’s eligibility. The Petitioner’s claims and the evidence submitted on appeal do not overcome the Director’s grounds for denial and the appeal will be dismissed for the following reasons.

The submission of a Form I-918 Supplement B is required by section 214(p)(1) of the Act, which provides that, “[t]he petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification” The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires that a Form I-918 “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 did not file his Form I-918 with the required initial evidence. On a motion to reopen to the Director, the Petitioner submitted a Form I-918 Supplement B dated November 20, 2014. However, it was not signed within the six-month period preceding the filing of the Petitioner’s Form I-918 and the Director correctly reaffirmed the denial of the Form I-918. We lack 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).

On appeal, the Petitioner asserts that the Director erred by denying the Form I-918 without first issuing a Request for Evidence (RFE). However, neither the statute nor the regulations governing U

nonimmigrant classification require the issuance of an RFE where eligibility has not been established. According to the regulation at 8 C.F.R. § 103.2(b)(8)(iii), “[i]f all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the benefit request for ineligibility” Here, the Director properly exercised discretion and denied the Form I-918 without first issuing an RFE because the Petitioner did not establish eligibility for the benefit sought. As the Petitioner did not submit the required initial evidence with his Form I-918 U petition, he is ineligible 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).

IV. CONCLUSION

The Petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and the Form I-918 must remain denied. The dismissal of this appeal is without prejudice to the Petitioner filing a new Form I-918 if he obtains a properly executed Form I-918 Supplement B, which complies with the regulation at 8 C.F.R. § 214.14(c)(2)(i) requiring, in part, that a Form I-918 Supplement B be “signed by a certifying official within the six months immediately preceding the filing of Form I-918.”

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also* *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S-O-*, ID# 15225 (AAO Dec. 18, 2015)