



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

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

MATTER OF N-S-

DATE: DEC. 24, 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 . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(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. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of India who currently resides outside of the United States. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on December 17, 2013. The Director subsequently issued a Request for Evidence (RFE), seeking, in part, to obtain a new statement from a certifying official describing the Petitioner's helpfulness. In response, the Petitioner submitted evidence which the Director found insufficient to establish the Petitioner's eligibility.

The Director denied the petition because the record did not establish that the Petitioner was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. The Petitioner timely appealed. On appeal, the Petitioner reasserts his eligibility and submits 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.

A. Certified Criminal Activity

On the Form I-918 Supplement B, the certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as attempted robbery and at Part 3.2 he listed the date of the criminal activity as April 16, 2003. The certifying official listed California Penal Code sections 211 (robbery) and 664 (attempt) as the statutory citations for the criminal activity that was investigated or prosecuted at Part 3.3. At Part 3.5, the certifying official briefly described the criminal activity, stating that the suspect pointed a gun at the Petitioner's son, demanded money, and when the Petitioner startled the suspect, the suspect fled and fired two rounds in an unknown direction. At Part 3.5, the certifying official indicated that the Petitioner was not shot and "the suspect did not leave with any money or property." At Parts 4.1 and 4.2, seeking information about the helpfulness of the victim, the certifying official indicated that the Petitioner does not possess information about the criminal activity, and has not been, is not being and is not likely to be helpful in the investigation and/or prosecution of the criminal activity.

B. Helpfulness to Law Enforcement

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).

The certifying official answered no to the question at Part 4.2 of the Form I-918 Supplement B, which asks whether the victim "has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above." In response to the Director's RFE seeking a new statement from a certifying official, the Petitioner submitted a copy of a letter he sent to the certifying agency, and a copy of the certifying agency's response, stating that the Sheriff's Department "does not process U-Visa Certifications unless the process has been initiated by Sheriff Investigators who are working an active case." The Petitioner further submitted a personal statement providing details of his helpfulness, in that he called 911, reported the crime, gave a description of the perpetrators and their car, and the police made arrests based on the Petitioner's help. The Petitioner provided statements from his wife and son, who further described the Petitioner's helpfulness, on the day after the incident, in a photograph identification line-up, and in follow-up telephone calls to the detective. The Petitioner, however, did not provide the requested statement from the certifying official.

On appeal, the Petitioner submits copies of Administrative Appeals Office non-precedent decisions, a new personal statement describing the details of the incident, his photographic identification of one of the perpetrators, and his efforts to follow up with the detectives. He submits a second statement outlining the unwillingness of the certifying agency to help, and his inability to gather the evidence he needs from outside of the United States. The Petitioner contends that Congress did not intend to allow a certifying agency to arbitrarily deny a reasonable request for a certification.

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).” Although on appeal the Petitioner asserts that the facts support his contention that he was helpful in the investigation and that USCIS has the discretion to determine the evidentiary value of submitted evidence, he does not recognize that on the Form I-918 Supplement B, the certifying official indicated that the Petitioner was not helpful in the investigation of the qualifying criminal activity. Therefore, the certifying official did not endorse the Petitioner’s helpfulness such that he is able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. Although the Petitioner asserts that the certifying official “wrongly” marked the box that indicated he was not helpful, the Petitioner did not provide an additional statement from a certifying official supporting his contention, as requested by the Director, and has not provided the requested statement on appeal. 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).

B. Possession of Information Concerning Qualifying Criminal Activity

Beyond the decision of the Director, the certifying official noted on the Form I-918 Supplement B at Part 4.1 that the Petitioner does not possess information concerning a qualifying crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.¹ For this additional reason, the petition must be denied.²

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

² Furthermore, the crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, and although the statute encompasses “any similar activity” to the enumerated crimes, the Petitioner has not shown that robbery under California law is substantially similar to any of the enumerated crimes. *See* 8 C.F.R. § 214.14(a)(9). As the Petitioner has not demonstrated that he is a victim of qualifying criminal activity, he has not demonstrated that he meets the remaining eligibility requirements for visa classification as a U nonimmigrant. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each ground considered as an alternative basis for denial. The Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. 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 N-S-*, ID# 14899 (AAO Dec. 24, 2015)