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



U.S. Citizenship
and Immigration
Services

Date: FEB 13 2015 Office: VERMONT SERVICE CENTER FILE: [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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

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 petition because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) at the time of filing the nonimmigrant U petition (Form I-918 petition). The director further determined that the petitioner failed to establish that she has been the victim of qualifying criminal activity, that she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity, and that she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. On appeal, the petitioner requests reconsideration of the denial and submits a letter from her former attorney's office.

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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in May 2000 without admission, inspection or parole. The petitioner filed the instant Form I-918 petition on May 15, 2012 with a Form I-918 Supplement B that did not contain an original signature of a certifying official and which was signed more than six months preceding the filing of the Form I-918. The director subsequently issued a Request for Evidence (RFE) of, among other things, a properly executed Form I-918 Supplement B. The petitioner timely responded with additional evidence, but she did not submit the required document. The director denied the petition.¹ The petitioner has appealed the denial of the Form I-918 petition.

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

On appeal, the petitioner states that her former attorney filed the petition with a properly executed Form I-918 Supplement B containing an original signature of a certifying official. The petitioner indicates that she initially gave her attorney a certification dated October 20, 2010, but that her attorney indicated that the certification had since expired. The petitioner claims that she obtained a new certification dated September 9, 2011 and provided it to her attorney prior to filing the Form I-918. The petitioner further states that the Sheriff's Office is unwilling to provide her with a new Form I-918 Supplement B signed by a certifying official. The petitioner also submits a letter from her former attorney stating that a properly executed Form I-918 Supplement B was previously submitted.

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

¹ The petitioner's former attorney claimed, in response to the RFE, that she had submitted the original Form I-918 Supplement B. However, the three files relating to the petitioner and her daughters contain only photocopies of the Form I-918 Supplement B and no originals.

the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 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 filed the Form I-918 petition with a photocopy of a Form I-918 Supplement B dated September 9, 2011, more than six months prior to the filing of the petitioner’s nonimmigrant U petition. Although we acknowledge the petitioner’s claims, 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).

Accordingly, the petitioner has failed to establish her eligibility 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).

The director also denied the Form I-918 petition for failure to demonstrate that the petitioner has been the victim of qualifying criminal activity, that she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity, and that she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. As the petitioner has not overcome the director’s finding that she failed to submit initial evidence at the time of filing the nonimmigrant U petition, these grounds of denial will not be further discussed.

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 at the time she filed her petition. She is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied. The dismissal of this appeal is without prejudice to the petitioner filing a new nonimmigrant U petition with the required law enforcement certification.

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. The petition remains denied.