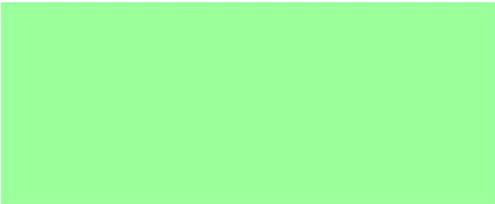


(b)(6)

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

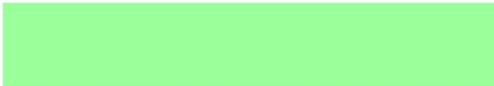


Date: FEB 25 2015

Office: VERMONT SERVICE CENTER

FILE: 

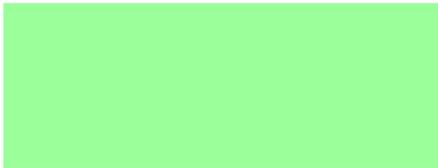
IN RE:

PETITIONER: 

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:



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 Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) properly executed by a certifying official at the time of filing the nonimmigrant U petition (Form I-918 U petition). On appeal, the petitioner submits a brief and asserts that the individual who executed the Form I-918 Supplement B is authorized to act as a certifying official.

*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(a) provides the following pertinent definitions:

\* \* \*

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their

respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

\* \* \*

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 last entered the United States in June 1999 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on April 1, 2013, with an accompanying Form I-918 Supplement B. The Form I-918 Supplement B was signed on March 20, 2013, by [REDACTED] Assistant Clerk of Court / Civil Division, [REDACTED] Clerk of Superior Court, in [REDACTED] North Carolina. [REDACTED] identified herself as the certifying official and [REDACTED] as the head of the certifying agency. Thereafter, the director issued a Request for Evidence (RFE) for the petitioner to establish that the claimed criminal activity was a qualifying criminal activity or substantially similar to one and that the individual who executed the Form I-918 Supplement B is a certifying official. The petitioner responded with a brief and additional evidence, including a letter from Assistant Clerk of Court, [REDACTED] asserting that she had the authority to execute a Form I-918 Supplement B on behalf of the [REDACTED] Clerk of Superior Court. The director subsequently denied the petition because the petitioner failed to submit a Form I-918 Supplement B properly executed by a certifying official. The petitioner timely appealed the denial of the Form I-198 U 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.

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 from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating [qualifying] criminal activity. . ."). Further, 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."

As indicated on the instant Form I-918 Supplement B, the [REDACTED] Clerk of Superior Court is listed as the certifying agency and [REDACTED] Assistant Clerk of Court, is identified as the certifying official. Upon review, the [REDACTED] Clerk of Superior Court, on its face, is not "a Federal, State, or local law enforcement agency, prosecutor, judge," or another authority that bears any responsibility for investigating or prosecuting qualifying criminal activity, and thus, it does not meet the regulatory definition of certifying agency found at 8 C.F.R. § 214.14(a)(2). *See also* Section 214(p)(1) of the Act. Rather, the office functions primarily in a recordkeeping capacity for local judges and magistrates, which is not encompassed in the definition of certifying agency.<sup>1</sup> Although the regulations allow for the head of a certifying agency to specifically designate any person in a supervisory capacity to issue certification for U nonimmigrant classification purposes, the record does not contain any such designation, authorizing the Clerk's Office or [REDACTED] to issue the Form I-918 Supplement B, from a qualifying certifying agency. 8 C.F.R. § 214.14(a)(3)(i).

Additionally, even if the [REDACTED] Clerk of Superior Court qualifies as a certifying agency, the Form I-918 Supplement still fails to satisfy the regulatory requirements for a certification, because the record does not establish that it was properly executed by a certifying official. As referenced, a certifying official is defined by regulation at 8 C.F.R. § 214.14(a)(3) as either the head of the certifying agency or "any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency," or a federal, state or local judge. Here, [REDACTED] Assistant Clerk of Court, who executed the Form I-918 Supplement B, is not a judge, and the record does not show that she is employed in any supervisory capacity by the [REDACTED] Clerk of Superior Court, which has in its employ over seventy Assistant and Deputy Clerks. *See* North Carolina Court

<sup>1</sup> The [REDACTED] Clerk of Superior Court is both an administrative and judicial office. However, its judicial authority is limited to matters such as probate of will and administration of estates, and does not include family or domestic relations matters under which the criminal activity here falls. The County Clerk is otherwise responsible for "all clerical and record keeping functions of the District and Superior Courts." *See* North Carolina Court System, [REDACTED] Clerk of Superior Court, available at [http://www.nccourts.org/County/\[REDACTED\]Staff/Clerk.asp](http://www.nccourts.org/County/[REDACTED]Staff/Clerk.asp) [last accessed February 6, 2015]. There is no evidence in the record that the County Clerk has any responsibility for investigating or prosecuting qualifying criminal activity and exercises anything other than record keeping authority over the petitioner's case for a domestic violence protective order.

System, [REDACTED] Clerk of Superior Court, available at, [http://www.nccourts.org/County\[REDACTED\]Staff/Clerk.asp](http://www.nccourts.org/County[REDACTED]Staff/Clerk.asp) [last accessed February 6, 2015]. There is also no evidence from the head of the agency, [REDACTED] Clerk [REDACTED] to show that he specifically designated [REDACTED] to issue a Form I-918 Supplement on the agency's behalf.

On appeal, the petitioner asserts that the County Clerk of Superior Court "is clothed with judicial authorit[y]," and contends the Court is authorized as a certifying agency because the local judge who presided over the petitioner's hearing for a domestic violence related protective order is no longer a judge. Although the petitioner is correct that the certifying official does not have to be the prosecutor in charge of the criminal matter, the certifying official must be from a qualifying certifying agency.<sup>2</sup> Here, the [REDACTED] Clerk does not appear to exercise judicial authority, and has only record keeping authority, over the petitioner's domestic violence case in [REDACTED] Superior Court and does not, therefore, qualify as a certifying agency. See *supra* Note 1; 8 C.F.R. § 214.14(a). Further, as discussed, even if the County Clerk exercised judicial authority and qualified as a certifying agency, he did not execute the certification as the head of the agency and the record lacks any evidence from [REDACTED] that he specifically designated [REDACTED] to execute the certification on behalf of the agency as required. Consequently, the Form I-918 Supplement B fails to comply with the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i), regarding required initial evidence. 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).

### Conclusion

The petitioner did not comply with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of initial evidence at the time she filed her petition as required. The petitioner 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 filing a new nonimmigrant U petition, should the petitioner obtain a properly executed 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.

<sup>2</sup> In her brief, the petitioner claims that because the Judge who presided over her hearing is retired and unable to provide certification, there is no other available certifying official and the petitioner is therefore foreclosed from obtaining U nonimmigrant status, contrary to public policy. See Appeal Brief at 2. However, as the petitioner herself points out, it need not be the Judge or prosecutor who handled the petitioner's case that certifies the Form I-918 Supplement B, but it must be a certifying official from a qualifying agency. We recognize the difficulties that a petitioner may face in obtaining a properly executed law enforcement certification; however, 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).