



U.S. Citizenship
and Immigration
Services

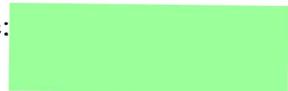
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Date:

Office: VERMONT SERVICE CENTER

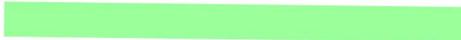
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JAN 16 2015

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.

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 qualifying certifying official of a certifying agency, at the time of filing the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). On appeal, the petitioner asserts that an updated Form I-918 Supplement B, executed by a certifying official, had been previously submitted to the director upon the latter's request and now submits a copy of the updated certification and other evidence.

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 [.]

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 as a minor in 2004 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on May 10, 2012, along with a Form I-918 Supplement B. The director twice issued a Request for Evidence (RFE), notifying the petitioner that the Form I-918 Supplement B was not signed by a recognized certifying official and requesting either an updated Form I-918 Supplement B or alternatively, evidence showing the individual who signed the certification was authorized to act as a certifying official. The petitioner's responses were submitted together with responses to RFEs issued for several family members who were either derivatives on her petition or had a separate petition pending. Although the cover letter for the initial response included a reference to an attached Form I-918 Supplement B executed by an authorized certifying official as requested, the director noted that the certification was not attached. The director accordingly denied the petition for failure to file a properly executed Form I-918 Supplement B as initial evidence. The petitioner timely appealed the denial of the Form I-198 U petition.

Analysis

We conduct appellate review on a *de novo* basis. Upon full review of the record, including the evidence submitted on appeal, we withdraw the director's decision to deny the petition on the stated grounds.

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 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 . . ." The record here demonstrates that the petitioner did in fact submit a properly executed Form I-918 Supplement B signed by a certifying official, as required by regulation.

A review of the record reveals that in response to the director's RFE, the petitioner submitted a Form I-918 Supplement B, dated July 30, 2013, that was signed by [REDACTED] Chief of Police, [REDACTED] Police Department, [REDACTED] Wisconsin (certifying official). However, because the petitioner responded to the director's RFEs for herself and her family members by submitting updated Forms I-918 Supplement B for all of them together, the petitioner's record did not contain the original updated Form I-918 Supplement B until now. The Form I-918 Supplement B submitted on behalf of the petitioner is

now part of the record and otherwise satisfies the requirements for a certification under the statute, as implemented by the regulations at 8 C.F.R. § 214.14(c)(2)(i).

Accordingly, as the petitioner did submit the required and properly executed Form I-918 Supplement B with her petition, she satisfies the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence. Upon further review, the petitioner has also established eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.¹ See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in order to waive a ground of inadmissibility. Here, the petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for such waiver because her underlying Form I-918 U petition had been denied. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192.

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 been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

¹ The evidence in the record establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. The certifying official provided on the Form I-918 Supplement B that the petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States. Our review of the record further reveals that the petitioner suffered substantial abuse as the result of the qualifying criminal activity.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.