

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



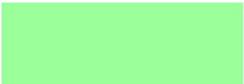
U.S. Citizenship
and Immigration
Services

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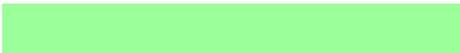


Date: **MAR 09 2015**

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:

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 he has been the victim of qualifying criminal activity, that he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity, and that he has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. The petitioner filed a timely appeal.

Applicable Law

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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 citizen of Mexico and a lawful permanent resident of the United States. The petitioner filed the instant Form I-918 petition on April 5, 2013, with a Form I-918 Supplement which was not properly executed, as Part 2 (Agency information) and Part 6 (Certification) of the Form I-918 were left blank. The director subsequently denied the petition. The petitioner timely appealed the denial of the Form I-918 petition.

Analysis

We review these proceedings *de novo*.

On appeal, the petitioner states that he was a victim of criminal activity that had taken place more than 38 years ago, and cannot provide a properly executed Form I-918 Supplement signed by a certifying official because the documentation for the crimes which were committed against him "no longer exist." He indicates that the [REDACTED] Police Department provided a letter to him stating that the police department's documentation of criminal activity would "only go back 10 [years]."¹ The petitioner further states that he submitted affidavits from family members attesting to the criminal activity because the form instructions to the Form I-918 state that when a required document is not available, affidavits may be submitted instead.

Although the petitioner states that the instructions to the Form I-918 allow for submitting affidavits if a required document is not available, 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 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." An affidavit cannot replace a Form I-918 Supplement B. In this case, the petitioner filed his Form I-918 petition with an unsigned Form I-918 Supplement B. Although we acknowledge the petitioner's statement that the policy of the Pasadena Police Department is to not retain documentation beyond ten years, 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).

¹ The record does not contain a letter from the [REDACTED] Police Department.

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 he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity, and that he 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 he failed to submit initial evidence at the time of filing the nonimmigrant U petition, these grounds of denial will not be further discussed.

Beyond the decision of the director, the petitioner indicated that he is a lawful permanent resident of the United States and is in removal proceedings.² Section 101(a)(15)(U)(i) of the Act provides for U nonimmigrant classification to alien victims and their qualifying family members. The term "immigrant" is defined by section 101(a)(15) of the Act as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." The nonimmigrant U classification under section 101(a)(15)(U) of the Act is one of the nonimmigrant classifications that is not included in the definition of "immigrant" at section 101(a)(15) of the Act.

A lawful permanent resident is not eligible for U nonimmigrant classification. The petitioner states that he is a lawful permanent resident, and USCIS records do not indicate that the petitioner has lost his lawful permanent resident status. Although the petitioner is in removal proceedings due to his criminal conviction for an aggravated felony, removal proceedings are ongoing. Lawful permanent resident status terminates upon entry of a final administrative order of deportation or removal. 8 C.F.R. §§ 1.2, 1001.1(p). Here, USCIS records do not indicate that the petitioner has received a final administrative order of removal or has lost his lawful permanent residency.

In addition, the statute and regulations do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. Although the Act allows an individual to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, the Act contains no such provision for a lawful permanent resident to adjust to U nonimmigrant status. *See* sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

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 he filed his petition. He is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied. In

² 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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NON-PRECEDENT DECISION

Page 5

addition, beyond the decision of the director, as a lawful permanent resident of the United States the petitioner is not eligible for U nonimmigrant classification.

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); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.