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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

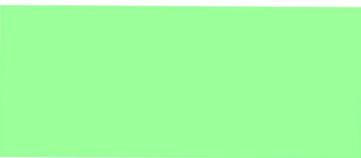


Date: **MAR 17 2015** Office: **VERMONT SERVICE CENTER** FILE:

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.

Thank you,

Hon Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), revoked approval of the U nonimmigrant visa petition after proper notification to the petitioner 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 revoked approval of the Petition for U Nonimmigrant Status (Form I-918 U petition) on the basis that the approval was in error because the petitioner did not submit a properly executed U Nonimmigrant Status Certification (Form I-918 Supplement B) when initially filing her petition. On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act provides, in pertinent part, 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;

Domestic violence is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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 certification must state that: the person signing the certificate is 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 is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

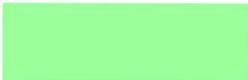
The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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(h) states, in pertinent part, the following:

(h) *Revocation of approved petitions for U nonimmigrant status* –

* * *

(2) *Revocation on notice.*

(i) [U.S. Citizenship and Immigration Services (USCIS)] may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

* * *

(B) approval was in error. . . .

(ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given that evidence will be within the sole discretion of USCIS. . . .

In addition, 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 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 Nigeria who entered the United States on August 17, 2001, on a B-1 nonimmigrant visa in someone else’s name.¹ She failed to depart the United States upon expiration of her period of authorized stay. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 28, 2008. On June 6, 2009, the director issued a Request for Evidence (RFE) for a copy of the petitioner’s valid passport and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to waive the petitioner’s inadmissibility grounds. The petitioner responded with a Form I-192 and additional evidence. On August 13, 2009, the director approved the Form I-918 U petition and Form I-192. The petitioner’s U-1 status was

¹ In her declaration, the petitioner states she entered the United States on September 25, 2001.

valid from July 30, 2009, until July 29, 2013. On November 5, 2012, the petitioner filed an Application to Register Permanent Residence or Adjust Status (Form I-485).

On August 29, 2013, the director issued a Notice of Intent to Revoke (NOIR) the Form I-918 U petition, informing the petitioner that the Form I-918 U petition had been approved in error because the individual who signed the Form I-918 Supplement B was not recognized as a certifying official. The director requested evidence that the individual who signed the Form I-918 Supplement B was a certifying official or a newly executed Form I-918 Supplement B signed by a qualifying certifying official. In response to the NOIR, the petitioner submitted a statement and additional evidence. The director found the petitioner's response insufficient to overcome her proposed ground for revocation, and she revoked approval of the Form I-918 U petition and Form I-192 on March 3, 2014. She also denied the Form I-485 on the same day. The petitioner timely appealed the revocation of the Form I-918 U petition.

On appeal, the petitioner asserts that as a victim of domestic violence, revoking her Form I-918 U petition would be devastating for her and her family, and that based on regulatory language, USCIS may exercise discretion and not revoke. She claims that she and her attorney have made attempts to obtain a statement or evidence from the certifying agency regarding their "certifying process or policy the police station was using in 2008 but the [REDACTED] Police Department was unwilling to help stating that too much time had passed."

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the director's decision will be withdrawn.

The record shows that four years after approving the petitioner's Form I-918 U petition, the director issued a NOIR requesting evidence that the individual who signed the Form I-918 Supplement B was a certifying official or a newly executed Form I-918 Supplement B signed by a certifying official. The petitioner indicated that she attempted to obtain the requested evidence but the certifying agency was unable to provide the information or a new Form I-918 Supplement B because of the length of time that had passed. The director then revoked approval of the Form I-918 U petition because the petitioner did not submit the requested evidence.

The revocation of an approved petition for U nonimmigrant status based upon an error that is discovered after the petition's approval is not mandatory, but discretionary. 8 C.F.R. § 214.14(h)(2)(i). Here, the director approved the Form I-918 U petition in July 2009 based, in part, on a Form I-918 Supplement B that was signed in January 2008. Although the director issued a Request for Evidence (RFE) in June 2009 prior to approving the U petition, nothing in this RFE related to any deficiencies with the Form I-918 Supplement B, as the director requested evidence only relating to the petitioner's inadmissibility. Not until four years later did the director raise the deficiency of the Form I-918 Supplement B regarding the authority of certifying official; however, as the record shows, the certifying agency was unable to either provide a letter or a newly-certified Form I-918 Supplement B due to the passage of time. Given the circumstances in this particular matter, we withdraw the decision to revoke approval of the petitioner's Form I-918 U petition.

Consequently, the petitioner remains statutorily eligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

The Petitioner's Inadmissibility

The director's decision to revoke approval of the petitioner's U nonimmigrant status also automatically revoked approval of her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) requesting a waiver of her inadmissibility. See 8 C.F.R. § 214.14(h)(4). Unlike the revocation of an approved Form I-918 U petition, we have no jurisdiction to review the director's decision to revoke approval of the Form I-192. See 8 C.F.R. § 212.17(b)(3). Accordingly, we must remand the record for the director to reconsider the Form I-192 and enter a new decision into the record on the Form I-918 U petition.²

Conclusion

The petitioner remains statutorily eligible for U nonimmigrant classification; however, the approval of her Form I-192 remains revoked. For this reason, we remand the Form I-918 U petition to the director to reconsider the petitioner's Form I-192 and enter a new decision into the record on the petitioner's eligibility for U nonimmigrant status. The petitioner bears the burden of proof to establish her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4).

ORDER: The director's decision, dated March 3, 2014, is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.

² The director also denied the petitioner's U adjustment application (Form I-485) based solely on the revocation of the petitioner's U status. Although we have jurisdiction to review the denial of a U adjustment application through the regulation at 8 C.F.R. § 245.24(f)(2), the petitioner did not appeal the U adjustment denial decision. Nevertheless, as the basis for the revocation of the petitioner's U status has been withdrawn, the director should *sua sponte* reconsider the denial of the petitioner's U adjustment application after reconsidering the petitioner's Form I-192 waiver application and entering a new decision on the Form I-918 U petition.