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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: **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. 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 U petition). On appeal the petitioner submits a photocopy of a Form I-918 Supplement B and a brief.

*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 last entered the United States at or near Nogales, Arizona, in February 2001 without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition on September 11, 2012 without an accompanying Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner has appealed the denial of the Form I-918 U petition, seeking a review of the director's decision.

On appeal, the petitioner submits a photocopy of a Form I-918 Supplement B signed by a certifying official on October 23, 2012.

### *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. We therefore find no error in the director's decision to deny the petition based upon lack of required initial evidence.

On appeal, the petitioner states that she filed her Form I-918 U petition without a signed Form I-918 Supplement B because she needed to meet certain age requirements for her younger sibling. The petitioner indicated that the Form I-918 Supplement B was signed by the certifying official on October 23, 2012 and given to her attorney on October 30, 2012, who was expecting the director to issue a Request for Evidence (RFE) to obtain the required certification. The petitioner subsequently submitted a photocopy of the Form I-918 Supplement B after filing the Form I-918 U petition.

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 within the six months immediately preceding the filing of Form I-918." In this case, the petitioner filed her Form I-918 U petition on September 11, 2012 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). The record does not show that a completed Form I-918 Supplement B was submitted with the Form I-918 U petition as initial evidence, and the Form I-918 Supplement B submitted on appeal was not signed within the six-month period preceding the filing of her nonimmigrant U petition. Eligibility for a benefit request must be established at the time of petition filing, particularly for individuals seeking U nonimmigrant classification, who are subject to an annual cap on U-1 nonimmigrant status and are placed on a waiting list, by filing date of petition, if they cannot be granted such status due solely to the cap. See 8 C.F.R. §§ 103.2(b)(1),

214.14(d); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The director properly denied the petition due to the lack of required initial evidence and the petitioner's submission of a Form I-918 Supplement B subsequent to the filing of the Form I-918 U petition does not cure this defect.

The director also did not err by denying the petition without first issuing an RFE. Neither the statute nor the regulations governing the U nonimmigrant classification require the issuance of an RFE where eligibility has not been established at the time a petition is filed. As stated in the regulation at 8 C.F.R. § 103.2(b)(8)(ii): “[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . . .” Here, the director properly exercised his discretion and denied the Form I-918 U petition without first issuing an RFE because the petitioner failed to submit required initial evidence.

Accordingly, the petitioner's filing of a Form I-918 Supplement B after USCIS received her Form I-918 U petition fails to conform to the statute at section 214(p)(1) of the Act and the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for required initial evidence. She, therefore, has failed to establish her eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and her Form I-918 U petition will remain denied.

*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. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition will remain denied. The dismissal of this appeal is without prejudice to filing of another Form I-918 U petition with a new Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

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.