



U.S. Citizenship  
and Immigration  
Services

(b)(6)



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. 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.

*Applicable Law*

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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);

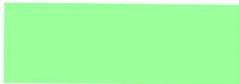
(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(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;

To establish a U nonimmigrant petitioner's helpfulness to law enforcement, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) further prescribes:

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:

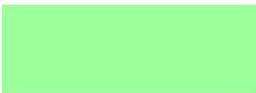
(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(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 AAO conducts appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico, who states that he entered the United States without admission, inspection, or parole in December 2002. On April 24, 2013, the petitioner filed a Form I-918 U petition with a Form I-918 Supplement B signed on October 21, 2012. The director subsequently denied the petition because the Form I-918 Supplement B was not signed within six months of the date of the filing of the Form I-918 U Petition. On appeal, the petitioner states that the certifying agency has refused to re-sign the Form I-918 Supplement B because he is no longer a "benefit to law enforcement." He submits a copy of his previously submitted police reports, the Form I-918 Supplement B, and the email message sent from his attorney to the certifying agency documenting his request for a subsequent Form I-918 Supplement B and the agency's refusal to provide the documentation.



*Analysis*

Upon review, we find no error in the director's decision to deny the petition. 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." As stated by the petitioner on appeal, the Form I-918 Supplement B initially submitted is dated 184 days, or six months and two days, prior to the filing of the Form I-918 U petition.

We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, without the requisite certification, the petitioner cannot establish that he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity as required under section 101(a)(15)(U)(i)(III) of the Act. The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. 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). For this reason, his appeal must be dismissed and his petition must remain denied.

Substantial Physical or Mental Abuse

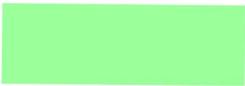
Beyond the decision of the director, because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if the qualifying criminal activity had been established, the petitioner's statement did not contain sufficient detail of any substantial physical or emotional harm suffered as a result of the encounter to meet the standard set forth under section 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not submit a valid Form I-918 Supplement B to establish that he was the victim of qualifying criminal activity, he is unable to establish that he possesses information concerning such activity, as required by section 101(a)(15)(U)(i)(II) of the Act. The petition remains denied on this ground as well.

Possesses Information and Helpfulness to Law Enforcement

As the petitioner did not submit a valid Form I-918 Supplement B under the regulations to establish that he was the victim of qualifying criminal activity, he has not shown that he possesses information about any qualifying criminal activity. To establish that a petitioner was helpful to law enforcement authorities under section 101(a)(15)(U)(i)(III) of the Act the evidence must demonstrate that a certifying agency investigated or prosecuted the qualifying criminal activity of which the petitioner was a victim. 8 C.F.R. § 214.14(b)(3). Without a valid Form I-918 Supplement B, the petitioner's helpfulness has not been established and the petition must remain denied on this ground as well.



Jurisdiction

As the petitioner did not submit a valid Form I-918 Supplement B to establish that he was the victim of qualifying criminal activity, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Admissibility to the United States

Even if the petitioner had established his statutory eligibility for U nonimmigrant classification, the petition would not be approvable because he remains inadmissible to the United States and his 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 his 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).

*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 not been met.

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