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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 07 2015**

[Redacted]

IN RE: Petitioner: [Redacted]

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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), revoked approval of the petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted and the petition remains revoked.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director revoked approval of the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because [REDACTED] Deputy District Attorney from the [REDACTED] California, District Attorney's Office (certifying official), withdrew the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). We dismissed the petitioner's subsequent appeal, finding that the petitioner had failed to overcome the grounds for revocation of the petition. We noted that the petitioner had not demonstrated that he had provided ongoing help to law enforcement in the investigation or prosecution of the criminal activity as required by section 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III). We also found that because the certifying official had withdrawn the Form I-918 Supplement B, the petitioner could not meet the requirement at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), that he submit a certification of his helpfulness from a law enforcement agency.

On motion, the petitioner contends that the director erred in revoking his approved Form I-918 U petition because the certifying official acted unreasonably in withdrawing the Form I-918 Supplement B. He asserts that the withdrawal of the Form I-918 Supplement B was based on false accusations against him by one of his five kidnappers, that the false accusations did not lead to overturning the convictions of the other four kidnappers, and that he has reiterated to the certifying official that he remains willing to assist in the investigation and prosecution. In support of his claims on motion, the petitioner submits a brief, his affidavit describing his continuing cooperation with law enforcement, a statement from counsel, and a letter from counsel to the certifying official requesting that the Form I-918 Supplement B be reinstated. The petitioner has met the requirements for a motion to reopen pursuant to 8 C.F.R. § 103.5(a) and the motion will be granted.

Applicable Law

Section 101(a)(15)(U)(i)(II)-(III) of the Act, provides U nonimmigrant classification to an alien who demonstrates, in pertinent part, that he "possess[es] information concerning [qualifying] criminal activity" and "has been helpful . . . to a Federal, State, or local law enforcement official . . . investigating or prosecuting [qualifying] criminal activity."

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).

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 petitioner possesses information concerning the qualifying criminal activity or which he or she has been a victim; [and] the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity

The petitioner also must show that “since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow the investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Women Protection Act of 2000] is not furthered.” *Id.*

Regarding the revocation of approved petitions for U nonimmigrant status, the regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

(2) *Revocation on notice.*

(i) [United States 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:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing

(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 to that evidence will be within the sole discretion of USCIS.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States on January 22, 2008, after he was paroled in to assist with the criminal investigation of his kidnapping. The petitioner filed a Form I-918 U petition and an accompanying Form I-918 Supplement B on August 5, 2008. The director approved the Form I-918 U petition on August 12, 2009. As we described in our decision on appeal, incorporated here by reference, the certifying official withdrew the Form I-918 Supplement B on April 16, 2012, on the basis of inconsistencies in the petitioner's testimony regarding his role in illegal narcotics activities linked to his kidnapping. The certifying official found that the petitioner was not a credible witness and could not be considered cooperative because he made false statements in response to questioning regarding his involvement in illegal narcotics activities. After reviewing the petitioner's response to a Notice of Intent to Revoke (NOIR), the director revoked the petitioner's approved Form I-918 U petition. In our decision on appeal, we found no error in the director's decision.

Analysis

We review these proceedings *de novo*. The relevant evidence submitted below and on motion does not overcome the stated grounds for the revocation of the petitioner's approved Form I-918 U petition or our decision on appeal. Accordingly, the petition will remain revoked.

On motion, the petitioner contends that the certifying official unreasonably withdrew the Form I-918 Supplement B based on false accusations against him. He states that he cooperated with law enforcement at great personal risk in order to assist in the prosecution of five individuals who perpetrated a violent kidnapping against him. He notes that although the case against the fifth kidnapper was dropped, four kidnappers were convicted due to his cooperation and that those kidnappers remain in prison despite false accusations the fifth kidnapper made against the petitioner's credibility. Additionally, he asserts that he has notified the certifying official that he remains willing to assist in the prosecution of the fifth kidnapper. Therefore, he asserts that the director's revocation of his approved Form I-918 U petition was in error.

In an affidavit submitted on motion, the petitioner describes being the victim and sole witness of a violent kidnapping, which led to his being granted U nonimmigrant status. He reiterates his cooperation in the prosecution of the first four kidnappers and his willingness to assist in the prosecution of the fifth. He asserts that the fifth kidnapper made false accusations against him in order to attack his credibility, but that he continued to cooperate with law enforcement. He notes that he appeared for interviews regarding the fifth kidnapper's accusations and denied false allegations that he was involved in illegal narcotics activities. He claims that revocation of his U

nonimmigrant status creates hardship for him and his family because he would be in danger if he had to return to Mexico.

The petitioner also submits a statement from counsel, who declares that he has notified the certifying official of the petitioner's continued willingness to assist in the investigation and prosecution of the fifth kidnapper. Counsel also states that the certifying official has confirmed by telephone that none of the convictions of the four convicted kidnappers have been set aside. The record also includes a letter from counsel to the certifying official, dated March 14, 2013, requesting reinstatement of the Form I-918 Supplement B and reiterating the petitioner's willingness to cooperate with law enforcement despite a risk to his life.

The petitioner has not demonstrated that the revocation of his approved Form I-918 U petition was in error. Although the petitioner claims that the accusations against him were false and that he provided truthful information to the certifying official in order to assist in the prosecution of his kidnappers, the only evidence of record to support his claims are his own statements and those of counsel. Those statements do not establish the petitioner's claim that the certifying official's decision to withdraw the Form I-918 Supplement B was unreasonable. To the contrary, the certifying official's letter regarding the withdrawal provides a detailed explanation of the reasons the petitioner was not credible. Furthermore, there is no indication that the certifying official has since concluded that the accusations against the petitioner were false or that he was credible and cooperative. Although the petitioner claims that the certifying official told him by phone that the kidnappers' convictions were not affected by the determination that he was not a credible witness, there is no other evidence in the record to support those assertions, and there is no indication that the motions to overturn the convictions are no longer pending or have been resolved. Despite the fact that the petitioner sent the certifying official a letter on March 14, 2013, requesting reinstatement of the Form I-918 Supplement B, the record does not show that the certifying official has done so or has determined that the petitioner was a credible and cooperative witness. The last statement from the certifying official that appears in the record is her April 4, 2011, letter, in which she states that the petitioner was not a credible witness and was found not to be cooperative due to false statements during interviews, that the case against the fifth kidnapper was dropped because the petitioner was not credible, and that the convictions against the other four kidnappers were being challenged through motions.

Accordingly, the petitioner has failed to overcome the grounds for denial regarding the revocation of his approved U nonimmigrant petition. He has not demonstrated that he has provided ongoing cooperation and assistance to law enforcement as required by 8 C.F.R. § 214.14(b)(3). He has also failed to meet the requirement at section 214(p) of the Act that he submit a certified Form I-918 Supplement B, and therefore cannot demonstrate eligibility for U nonimmigrant status as described in section 101(a)(15)(U)(i) of the Act. Therefore, the director's revocation of the approved Form I-918 U petition was not in error, and the petition remains revoked.



Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is granted. The petition remains revoked.