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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 20 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 U Nonimmigrant Status Certification (Form I-918 Supplement B). In addition, the director noted that the petitioner failed to meet the eligibility requirements for U nonimmigrant classification. On appeal, the petitioner submits a brief, additional evidence and copies of documents already included in the record.

Applicable Law

Section 101(a)(15)(U) of the Act 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[.]

* * *

Further, 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 in October 2003, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) on July 2, 2014, without a Form I-918 Supplement B. On the same day, the petitioner filed an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). On July 16, 2014, the director received a scanned copy of a Form I-918 Supplement B, dated July 3, 2014, and the original was filed on October 14, 2014. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The director also noted that the petitioner failed to meet the eligibility requirements for U nonimmigrant classification. The director denied the Form I-192 on the same day. The petitioner timely appealed the denial of the Form I-198 U petition. On appeal, the petitioner claims that she filed the Form I-918 U petition without the law enforcement certification because her minor son was about to age out. She explains that she wanted to file the Form I-918 U petition before her son's twenty-first birthday on July 5, 2014, and she attempted to file the Form I-918 Supplement B as soon as she received it from the certifying agency.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition based upon lack of required initial evidence.

The petitioner filed her Form I-918 U petition on July 2, 2014. When filing this petition, the petitioner was required not only to submit a Form I-918 Supplement B, but also to ensure that it was properly executed. A properly executed law enforcement certification is one that is, in part, "signed by a certifying official within the six months immediately preceding the filing of Form I-918." See 8 C.F.R. § 214.14(c)(2)(i).

The Form I-918 Supplement B that the petitioner submitted to establish her victimization was signed on July 3, 2014, one day after the July 2, 2014 filing date of her U petition. Although we understand the petitioner's desire to establish a filing date for her petition that pre-dated her son's twenty-first birthday, 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). Consequently, the petitioner has not submitted required initial evidence and her petition may not be approved on this basis alone.

On appeal, the petitioner faults the director for not issuing a Request for Evidence (RFE) prior to denying the petition; however, where a Form I-918 Supplement B is not signed within the six-month period preceding the filing date of the petition, an RFE would serve no useful purpose because the petitioner is ineligible for the benefit at the time of filing. See 8 C.F.R. § 103.2(b)(8)(i) ("If the record evidence establishes ineligibility, the benefit request will be denied on that basis.").

As the petitioner did not submit a Form I-918 Supplement B signed by the certifying official within the six-month period prior to the July 2, 2014 filing date of her Form I-918 U petition, she is ineligible for U status due to the lack of required initial evidence.¹

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. Accordingly, the appeal will be dismissed.

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

¹ The director also noted that the petitioner did not establish her statutory eligibility for U nonimmigrant status, but did not discuss these issues further. Our decision does not address the petitioner's statutory eligibility for U nonimmigrant status because we do not reach that issue, as required initial evidence has not been submitted.