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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Z-K-A-

DATE: NOV. 30, 2015

MOTION TO RECONSIDER VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (INA, or the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition finding that the Petitioner did not establish that he was the victim of qualifying criminal activity. We dismissed a subsequent appeal and concluded that the Petitioner had not established that the crime certified was a qualifying criminal activity under the Act, that he possessed credible and reliable information, and that he was helpful in the investigation of a qualifying criminal activity. The matter is now before us on a motion to reconsider. The motion will be denied.

On motion, the Petitioner asserts that he submitted credible evidence with the Form I-918 Petition for U Nonimmigrant Status, including detailed affidavits written in support of his claim that he was a victim of a qualifying crime, that the crime certified was a qualifying criminal activity under the Act, that he possessed credible and reliable information, and that he was helpful in the investigation of a qualifying criminal activity. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 214.14(a)(14) defines “victim of qualifying criminal activity” as an alien who is directly and proximately harmed by qualifying criminal activity. The Petitioner claims that affidavits provided by the Petitioner and an amended offense report prepared by the [REDACTED] Police Department, which lists the Petitioner as a “complainant”, verify that he was a victim of a robbery in [REDACTED] 1996, shortly after he first entered the U.S. The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Assistant Chief/Criminal Investigations, [REDACTED] Police Department (certifying official) and the certifying official specifically stated at Part 3.5 of Form I-918 Supplement B that, not only was the Petitioner’s name added to the offense report sixteen years after the robbery, but that there was no evidence that the Petitioner was actually present at the time of the robbery. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including the Form I-918 Supplement B. The statements of the certifying official on the Form I-918 Supplement B are very clear and, in contrast, the affidavits and amended offense report are not sufficiently detailed or

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probative to demonstrate that the Petitioner meets the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14).

The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as “Agg Robbery DW” in the space indicating “other.” In Part 3.3, the certifying official did not list a statutory citation. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that there was no evidence in the record to support the Petitioner’s claims that he was involved with a robbery on [REDACTED], 1996. The certifying official further stated that, upon a request from the Petitioner’s uncle, the Petitioner was added as a complainant several years later but that there was no documentation that the police ever spoke with the Petitioner when the robbery occurred.¹ Robbery crimes are not specifically listed as a qualifying crime or criminal activity at section 101(a)(15)(U)(iii) of the Act and the Petitioner has not established on motion that the robbery which was certified is substantially similar to the statutorily enumerated list of criminal activities. 8 C.F.R. § 214.14(a)(9). Rather, the Petitioner claims on motion that we erred in our previous decision because we allegedly contradicted a prior non-precedent decision in an unrelated case. In addition to the Petitioner’s case being factually different from the non-precedent decision cited by the Petitioner, we do not announce new interpretations of law or establish agency policy through non-precedent decisions.

The certifying official stated in Part 4 of Form I-918 Supplement B that the Petitioner does not possess information concerning the listed criminal activity nor has he been, is being, or is likely to be helpful in the investigation. On motion, the Petitioner claims that the certifying official did not indicate that the Petitioner was helpful to the investigation because the Petitioner was not included in the original offense report and, therefore, the certifying official would have no knowledge as to whether the Petitioner was helpful or not. The Petitioner argues on motion that helpfulness should be established by the “totality of the circumstances” rather than solely in reliance on the Form I-918 Supplement B. The Petitioner’s argument is misplaced: the certifying official did not endorse the Petitioner’s helpfulness on the Form I-918 Supplement B and, as a result, the Petitioner is unable to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act and as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3). In addition, none of the affidavits or other documents supplied by the Petitioner provide detailed, probative information regarding any assistance provided by the Petitioner in the investigation of the robbery.

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see*

¹ The Form I-918 Supplement B indicates that the Petitioner’s uncle “told police it was important that the [Petitioner] be added to the report because [the Petitioner] was in ICE custody and he needed to prove he was in the U.S. at the time of the incident.” That justification for amending the offense report does not pertain to the basis for the Petitioner’s subsequent filing of a Form I-918 and also does not comport with the Petitioner’s uncle’s affidavit, in which he claims that he contacted the [REDACTED] Police Department to amend the offense report because he “knew that [the Petitioner] had been a victim of a serious crime with me in [REDACTED] and that could help him.” On that basis, it is unclear whether the [REDACTED] Police Department was provided with the proper rationale for amending the offense report.

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also Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the motion will be denied.

ORDER: The motion is denied.

Cite as *Matter of Z-K-A-*, ID# 15097 (AAO Nov. 30, 2015)