



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

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

MATTER OF A-M-S-

DATE: SEPT. 25, 2015

APPEAL OF 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 (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

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

(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;

In addition, 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."

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).

Pursuant to the regulations, 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[es] 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 an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, in conjunction with a Form I-918 in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." The only issue that may come before us is whether the Director was correct in finding the Petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . .

(I) A crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime,

...

(6) Illegal Entrants and Immigration Violators

(A) Aliens Present Without Permission or Parole

(i) In General.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in March 1991 without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on October 2, 2012. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant on the same day. The Director subsequently issued a request for evidence (RFE) requesting that the Petitioner establish his helpfulness to law enforcement in investigating or prosecuting the claimed criminal activity. The Petitioner submitted a brief and additional evidence in response to the RFE which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918. On the same day, the Director denied the Form I-192 because of the denial of the Form I-918 and noted that the Petitioner is inadmissible under sections 212(a)(2)(A)(i)(I) (commission or conviction of a crime involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. The Petitioner timely appealed the denial of the Form I-918 and Form I-192. On appeal, the Petitioner asserts that he never received a request from the certifying authority for further assistance and was only informed that efforts had been made to reach him upon receiving the Form I-918 Supplement B.

III. ANALYSIS

The AAO conducts appellate review on a *de novo* basis. Upon review of the evidence in the record, the Petitioner has not overcome the burden of demonstrating his eligibility for the relief sought.

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A. Appeal Filed as a Motion to Reopen and Reconsider

On the Form I-290B, Notice of Appeal or Motion, the Petitioner checked the box in Part 3.1.b (filing an appeal) and Part 3.2.f (filing a motion to reopen and a motion to reconsider a decision). The Petitioner also indicated in Part 3.3 that he was appealing the denial of both his Form I-918 and Form I-192. The instructions on Form I-290B clearly state that only one box may be checked, indicating either a motion or an appeal is being filed, but not both. The Form I-290B also states “**if more than one box is selected, your filing will be rejected.**” (Emphasis in original.) In addition, only one petition may be appealed per each Form I-290B. Despite these deficiencies in filing, we exercise our *sua sponte* authority to review the appeal.

B. Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that he has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

The record contains a Form I-918 Supplement B signed by [REDACTED] (certifying official) of the [REDACTED] Illinois Police Department, dated July 11, 2012 and relating to an incident that occurred on August 26, 2006. The certifying official indicated at Part 4.2 that the Petitioner was helpful in the investigation of the qualifying criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. The certifying official indicated in Part 4.5 that the Petitioner “gave responding officers enough information to complete a report. However, the [Petitioner] did not respond to Detectives who were assigned to investigate this matter. [T]he Detectives left phone messages, and sent a letter to the [Petitioner’s] residence and no response from the [Petitioner].”

In response to the Director’s RFE inquiring as to the Petitioner’s helpfulness to the certifying authority, he submitted a personal statement in which he stated that he never received any communications from the [REDACTED] Police Department. The Petitioner stated that he has assisted law enforcement in the past in an unrelated investigation and prosecution when he testified in a murder trial as a witness to his friend’s killing. The Petitioner stated that he had no reason to refuse to assist in this matter since he had already risked his life to testify in an unrelated investigation and prosecution against a person who murdered the Petitioner’s friend and, moreover, he simply did not receive any communications about the investigation. The Petitioner posited that any letters or calls made to his house may have been ignored by his parents who do not speak English and that he was a minor child shortly after the incident and living under the care of his parents. He also reiterated his willingness to cooperate to the certifying official when he requested the certifying official to complete and sign the Form I-918 Supplement B.

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In her denial decision, the Director stated that USCIS contacted the certifying authority to resolve the discrepancy between the certifying official's response in Part 4.2 and the statement made in Part 4.5 of Form I-918 Supplement B regarding the Petitioner's helpfulness. In response to the inquiry, the certifying official indicated to USCIS that the response in Part 4.2 should be changed to indicate that the Petitioner had not been helpful in the investigation of the qualifying criminal activity. The Director concluded that, as the statute of limitations had passed and the case was closed, the Petitioner did not provide continued assistance to law enforcement. On appeal, the Petitioner states that he never made an intentional decision not to assist with the investigation, but that he was unable to help because he did not receive the communications from the certifying authority. The Petitioner notes that the original Form I-918 Supplement B indicated that he was helpful and that he has previously assisted in other criminal investigations.

Section 214(p)(1) of the Act requires a petitioner to submit "a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act] . . . 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 Form I-918 Supplement B submitted by the Petitioner with his initial filing contained an inherent contradiction between Part 4.2 where the certifying official indicated that the Petitioner was helpful and the comment in Part 4.5 where the certifying official stated that the Petitioner failed to assist in the investigation.

The RFE requested that the Petitioner resolve the discrepancy on the Form I-918 Supplement B and noted that the Petitioner could address the apparent discrepancy by submitting a newly issued Form I-918 Supplement B showing that he was helpful in the investigation or prosecution. The Petitioner elected to submit only a personal statement in response to the RFE. We recognize the Petitioner's explanation that he was not helpful in the investigation of the crime because he claims not to have received any requests to do so, however, we lack the 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). The Petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act and the Petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

C. Inadmissibility

All nonimmigrants, including U nonimmigrants, must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As we do not have jurisdiction to review whether the Director properly denied the Form I-192, the only issue before us is whether the Director was correct in finding the Petitioner inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

The evidence in the record indicate that the Petitioner was arrested for simple battery on [REDACTED] [REDACTED] 2007 in violation of 720 Illinois Compiled Statute (ILCS) § 5/12-3; aggravated assault with a [REDACTED]

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handgun on █████ 2004 in violation of 720 ILCS § 5/12-2; and five arrests for driving without proper authorization between 2006 and 2011. As the Petitioner notes on appeal, the 2004 and 2007 arrests were juvenile adjudications and cannot form the basis for a finding of inadmissibility based on section 212(a)(2)(A)(i)(I) of the Act. As a result, we withdraw that portion of the Director's decision finding the Petitioner inadmissible on this ground.

However, the Director also found the Petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The Petitioner admits that he entered the United States in March 1991 without admission, inspection or parole. As the Petitioner does not claim to have been "admitted" to the United States under a lawful status, the Petitioner is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act for being present without being admitted or paroled. The Petitioner does not contest this ground or basis for inadmissibility but, instead, asserts that the Director abused her discretion in denying the Form I-192, because he demonstrated rehabilitation and that his previous criminal acts were out of character. We have no jurisdiction to review the discretionary portion of the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3). The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

IV. 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). The Petitioner has not established that he was helpful to the certifying agency or that he was admissible to the United States. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-S-*, ID# 14241 (AAO Sept. 25, 2015)