



U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-W-Z-

DATE: FEB. 9, 2016

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 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[.]

....

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . felonious assault; . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

....

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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

....

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) 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
- (ii) A Federal, State, or local judge.

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.”

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II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of China who claims he entered the United States without inspection, admission, or parole on January 26, 1992. 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 June 26, 2013. He also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive his grounds of inadmissibility. The Director issued a request for evidence (RFE) that a properly executed Form I-918 Supplement B was submitted at the time of filing the Form I-918 pursuant to section 214(p)(1) of the Act. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 and the accompanying Form I-192. The Petitioner timely appealed.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. A full review of the record does not establish the Petitioner's eligibility. The Petitioner's claims and the evidence submitted on appeal do not overcome the Director's grounds for denial and the appeal will be dismissed for the following reasons.

The submission of a Form I-918 Supplement B is required by statute at section 214(p)(1) of the Act, which provides that, "[t]he petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification" The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires that a Form I-918 "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 provided by the regulation at 8 C.F.R. § 103.2(b)(1), a petitioner "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication."

The Form I-918, Supplement B initially submitted with the Petitioner's Form I-918 was signed by [REDACTED] Detective, [REDACTED] Police Department [REDACTED] on April 3, 2013. In the RFE, the Director noted that Detective [REDACTED] was not recognized as a certifying official and requested evidence that the head of the certifying agency, or a person in a supervisory role that has been specifically designated by the head of the certifying agency, authorized Detective [REDACTED] to sign the Form I-918 Supplement B. In response, the Petitioner argued that Detective [REDACTED] was qualified to act as a certifying official because his rank places him in a supervisory role and because the head of the certifying agency did not prohibit [REDACTED] from acting in this capacity. On appeal, the Petitioner reasserts that the Form I-918 Supplement B was properly signed by an authorized certifying official because the [REDACTED] did not have a certification policy in place at the time it was issued. On appeal, the Petitioner also submits a Form I-918 Supplement B signed by the [REDACTED] deputy chief [REDACTED]

Despite the Petitioner's assertions below and on appeal, the record does not demonstrate that Detective [REDACTED] was qualified to act as a certifying official. The Petitioner states on appeal that there was no [REDACTED] policy at the time addressing this issue and that Deputy Inspector [REDACTED]

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██████████, as the head of the ██████████ designated Detective ██████████ as a certifying official. The Petitioner submits a copy of Deputy Inspector ██████████ profile on the ██████████ internet site as evidence in support of this contention. However, the copy of Deputy Inspector ██████████ profile does not show that he properly designated Detective ██████████ as a certifying official or that Deputy Inspector ██████████ himself was an authorized certifying official. Furthermore, the Petitioner did not submit any evidence that Det. ██████████ was designated by the head of the ██████████ to issue a Form I-918 Supplement B certification as of the date of his signature on April 3, 2013, nor that Det. ██████████ was employed in a supervisory capacity. In addition, as stated in the Director's denial, we have confirmed that at the time the Petitioner's Form I-918 Supplement B was signed, only ██████████ Commissioner ██████████ was designated as a certifying official.

Although on appeal the Petitioner submits a Form I-918 Supplement B properly executed by an authorized certifying official, Chief ██████████ the Petitioner did not file his Form I-918 with the required initial evidence, and 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).¹ As the Petitioner did not submit the required initial evidence with his Form I-918, he is ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).²

IV. CONCLUSION

The Petitioner did not comply with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of initial evidence at the time he filed his Form I-918 as required. The Petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his Form I-918 must remain denied. The dismissal of this appeal is without prejudice to the filing of a new Form I-918 with a properly executed law enforcement certification.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

¹ On appeal, the Petitioner further contends that the Form I-918 Supplement B is only one component of the Form I-918 and that any "irregularities" with the Form should not automatically disqualify the Petitioner. However, as stated above, the Form I-918 Supplement B is required by statute at section 214(p)(1) of the Act, and we lack authority to waive the requirements of the statute and the regulations. *See Nixon*, 418 U.S. 683 at 695-96. Furthermore, 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.

² The Director further determined without discussion that the Petitioner did not establish the eligibility requirements regarding substantial abuse, helpfulness, possession of information and admissibility to the United States. As the Form I-918 is otherwise deniable, the remaining grounds will not be addressed.

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ORDER: The appeal is dismissed.

Cite as *Matter of C-W-Z-*, ID# 15437 (AAO Feb. 9, 2016)