



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

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

MATTER OF S-A-G-P-

DATE: FEB. 10, 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, 8 U.S.C. § 1101(a)(15)(U), provides U nonimmigrant classification to 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[.]

....

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.”

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of El Salvador who claims to have entered the United States on September 8, 2002, without admission, inspection, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on September 8, 2014, without an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the petition because the Petitioner did not submit a properly executed Form I-918 Supplement B at the time of filing the Form I-918.¹ The Petitioner timely appealed the denial and submitted a Form I-918 Supplement B and other evidence.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director’s grounds for denial. The appeal will be dismissed for the following reasons.

The submission of a Form I-918 Supplement B with a Form I-918 is required by statute at section 214(p)(1) of the Act (“The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification . . .”). As provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), 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.” The Director properly denied the Form I-918 below because the Petitioner did not file a Form I-918 Supplement B as required initial evidence with his Form I-918.

¹ The Director also noted that the Petitioner had not established the eligibility requirements for U nonimmigrant classification set forth at section 101(a)(15)(U)(i) of the Act but did not further address this issue in any probative detail as the Form I-918 was denied on other grounds.

On appeal, the Petitioner submits a Form I-918 Supplement B for the first time and states that the failure to file the certification with the initial petition was solely due to an administrative error on the part of his Counsel of record's office. While we understand that the failure to file the requisite initial evidence was inadvertent, we lack authority to waive the requirements of the statute, as implemented by the referenced 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 filing of the certification subsequent to USCIS' denial of his Form I-918 does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for required initial evidence, and he, therefore, has failed to establish his eligibility 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).

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 when 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 adjudication of the Petitioner's new Form I-918 and Form I-918 Supplement B in the record.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-G-P-*, ID# 15415 (AAO Feb. 10, 2016)