



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

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

MATTER OF J-Z-J-

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 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[.]

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The regulation at 8 C.F.R. § 214.14(a) provides the following relevant 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.

....

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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of China who claims to have last entered the United States on May 15, 2008,<sup>1</sup> without admission, inspection, or parole. The Petitioner filed the Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on June 24, 2013. On March 18, 2014, the Director issued a

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<sup>1</sup> In a previous immigration application, the Petitioner claimed to have last entered the United States on April 22, 2008, without admission, inspection, or parole.

(b)(6)

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request for evidence (RFE) that the individual who signed the Form I-918 Supplement B was recognized as a certifying official. In response, the Petitioner asserted that the certifying official was authorized to sign the Form I-918 Supplement B. The Director found the Petitioner's response insufficient to establish her eligibility, and denied the petition, as the record did not establish that criminal activity was properly certified.<sup>2</sup> The Petitioner timely appealed. On appeal, the Petitioner submits a brief and copies of previously submitted evidence.

### III. 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.

#### A. The Form I-918 Supplement B was not Properly Executed

The submission of a Form I-918 Supplement B 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 from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating [qualifying] criminal activity. . ."). Further, 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."

The Form I-918 Supplement B identifies [REDACTED] Police Department [REDACTED] New York, as the certifying official, and Kevin [REDACTED] as the head of the certifying agency. [REDACTED] signed the Form I-918 Supplement B on April 8, 2013. Although the regulations allow for the head of the certifying agency to specifically designate any person in a supervisory capacity to issue certification for U nonimmigrant classification purposes, the record does not contain any such designation. A certifying official is defined by regulation at 8 C.F.R. § 214.14(a)(3) as either 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 a federal, state or local judge. Here, the Petitioner has not shown that [REDACTED] was employed in a supervisory capacity, or that the head of the agency specifically designated him to issue a Form I-918 Supplement B on behalf of the [REDACTED]

On appeal, the Petitioner asserts that at the time the Form I-918 Supplement B was certified, the [REDACTED] did not have a certification policy, and that the Director erred in finding that the then-police commissioner, [REDACTED] was the only designated certifying official. The Petitioner submits evidence indicating that prior to October 14, 2014, the [REDACTED] did not have official guidelines for obtaining Form I-918 Supplement B certification requests. Nevertheless, the Petitioner did not

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<sup>2</sup> The Director stated further that although the Petitioner had not established the eligibility requirements for substantial abuse, helpfulness, possession of information, or that she was admissible to the United States, she would limit the scope of her denial to the lack of a properly certified Form I-918 Supplement B. On appeal, we will accordingly limit the scope of our review to the single issue constituting the basis of the Director's denial.

(b)(6)

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submit any information from the NYPD that [REDACTED] was designated by the head of the [REDACTED] to issue a Form I-918 Supplement B certification as of the date of his signature on April 8, 2013.<sup>3</sup> As the [REDACTED] did not have a certification or designation policy in effect at the time the Petitioner's I-918 Supplement B was signed, under the regulation at 8 C.F.R. § 214.14(a)(2), only the head of the certifying agency qualified as the certifying official.

The Petitioner further contends that the Form I-918 Supplement B is only one component of the petition and that any "irregularities" with the Form should not automatically disqualify the Petitioner. However, 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 United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). Furthermore, without the requisite certification, the Petitioner cannot establish that she 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. As the Petitioner has not submitted a properly executed Form I-918 Supplement B, she has not complied with the Act or the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence and her Form I-918 must be denied.

Ultimately, the Form I-918 Supplement B fails to comply with the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i) regarding required initial evidence. Accordingly, the Petitioner has failed to establish her eligibility for U nonimmigrant classification. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring certified, 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 at the time she filed the Form I-918 as required. She is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act. The dismissal of this appeal is without prejudice to filing a new Form I-918, should the Petitioner obtain a properly executed Form I-918 Supplement B.

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.

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<sup>3</sup> Although in the brief on appeal, Petitioner's Counsel of record claims that the head of the [REDACTED] designated [REDACTED] is a supervisory official, no evidence was submitted to support these assertions and the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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**ORDER:** The appeal is dismissed.

Cite as *Matter of J-Z-J*, ID# 15425 (AAO Feb. 10, 2016)