



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

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

MATTER OF J-P-M-

DATE: MAR. 18, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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. We dismissed the Petitioner's subsequent appeal and motion to reconsider. The matter is now before us on a motion to reopen. The motion will be denied.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act 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 certification must state that: the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting;

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."

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). Consequently, the motion will be denied for the following reasons.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States as a minor in September 2008 without valid documents. He filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on May 1, 2012. The Director denied the Form I-918, concluding that the Petitioner had not established that misdemeanor battery under the California Penal Code was a qualifying criminal activity or substantially similar to one of the qualifying crimes such that he was a victim of qualifying criminal activity. Consequently, the Director also held that the Petitioner did not demonstrate the eligibility requirements for U nonimmigrant classification set forth at section 101(a)(15)(U)(i). We dismissed the Petitioner's subsequent appeal and motion to reconsider.

In our prior decisions, incorporated here by reference, we held that the evidentiary record established that the Petitioner was a victim of a misdemeanor battery under Cal. Penal Code section 242, as set forth on the Form I-918 Supplement B, and that misdemeanor battery under California law was not a qualifying criminal activity and was not substantially similar to the qualifying crime of felonious assault, as the Petitioner maintained. We further found that the certifying official's letter submitted on appeal, asserting that later review of the Petitioner's criminal case indicated that the battery offense should have been classified as a felony, confirmed that the certifying agency had not in fact detected,¹ investigated or prosecuted a felony battery offense committed against the Petitioner at the time he filed his Form I-360. The Petitioner has now filed a timely motion to reopen and submits a

¹ The term "investigation or prosecution," as used in section 101(a)(15)(U) of the Act, also refers to the "detection" of a qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5).

(b)(6)

Matter of J-P-M-

new Form I-918 Supplement B, certifying the Petitioner as a victim of felony battery, which he maintains is substantially similar to the qualifying criminal activity of felonious assault.

III. ANALYSIS

Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the grounds for denial.

On motion, the Petitioner does not contest our decision on his prior motion to reconsider, and upon review, we affirm our previous decisions. Instead, the Petitioner submits a new Form I-918 Supplement B, signed on March 17, 2015, by [REDACTED] Youth and Family Services Division, [REDACTED] Police Department, [REDACTED] California (certifying official), certifying the Petitioner as a victim of felony battery under section 243(d) of the Cal. Penal Code. He asserts that the new Form I-918 Supplement B demonstrates that the certifying agency detected the offense of felony battery committed against him and that felony battery under California law is substantially similar to a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.²

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 . . .”). Although there is no statutory filing deadline for a Form I-918, the regulation at 8 C.F.R. § 214.14(c)(2)(i) requires that when a Form I-918 is filed, it “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.” (Emphasis added).

The new Form I-918 Supplement B proffered on motion was not submitted as initial evidence in these proceedings and was not executed within the six months preceding the filing of the instant Form I-918. Consequently, the Petitioner’s filing of a new Form I-918 Supplement B on motion before us, certifying a different criminal offense, does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for required initial evidence. Although we recognize the difficulties the Petitioner has faced in obtaining a proper Form I-918 Supplement B and pursuing his Form I-918, we lack authority to waive the requirements of the statute, as implemented by the referenced regulations.³ *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).

Even if we could disregard the regulatory requirements, the new Form I-918 Supplement B certifying the Petitioner as a victim of felony battery does not demonstrate the Petitioner’s eligibility at the time he filed his Form I-918, as required. 8 C.F.R. § 103.2(b)(1) (stating that a petitioner is required to establish eligibility at the time of filing the nonimmigrant visa petition). A visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new

² As the instant motion is denied on other grounds, we do not reach the issue specifically of whether felony battery under Cal. Penal Code section 243(d) is substantially similar to qualifying criminal activity.

³ Our decision here is without prejudice to the filing a new Form I-918, along with the required Form I-918 Supplement B conforming to the regulatory requirements addressed herein.

set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). A U nonimmigrant petitioner is required to establish that he or she has been, is being, or is likely to be helpful "to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based." 8 C.F.R. § 212.14(b)(3) (emphasis added). A petitioner must therefore demonstrate that at the time of filing, his or her Form I-918 was based on a qualifying crime that the certifying agency was investigating or prosecuting or had investigated or prosecuted. Our review of the record here discloses that the original Form I-918 Supplement B that served as the basis of the instant Form I-918 indicated that the certifying agency had investigated and prosecuted the non-qualifying criminal offense of misdemeanor battery committed against the Petitioner. The Petitioner's subsequent submission of a new Form I-918 Supplement B, executed in March 2015, does not establish that the certifying agency had investigated or prosecuted a felony battery offense at the time the Petitioner filed his Form I-918 earlier in May 2012. In fact, the certifying official's letter, dated December 19, 2013, confirmed that responding police officers had not detected felony battery against the Petitioner when he first reported the criminal activity committed against him. Thus, even if felony battery were substantially similar to the qualifying criminal activity of felonious assault as the Petitioner contends, the record as a whole does not demonstrate that the certifying agency detected, investigated, or prosecuted a qualifying criminal activity committed against the Petitioner at the time he filed his Form I-918, and the certifying agency's subsequent detection of criminal activity after the filing of the Form I-918 does not establish the Petitioner's eligibility at the time of filing, as required. *See* 8 C.F.R. § 103.2(b)(1).

IV. CONCLUSION

On motion, the Petitioner has not contested the grounds for denial in our prior decisions, in which we held that the Petitioner had not established that misdemeanor battery under California law, of which he was a victim, was a qualifying criminal activity or substantially similar to a qualifying criminal activity. In addition, the new Form I-918 Supplement B, proffered on motion and certifying the Petitioner as a victim of felony battery, does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and alternatively, does not establish his eligibility at the time of filing. Consequently, the Petitioner has not established 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).

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 motion to reopen is denied.

Cite as *Matter of J-P-M-*, ID# 16100 (AAO Mar. 18, 2016)