



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

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

MATTER OF R-F-H-

DATE: NOV. 18, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, revoked approval of the Form I-918, Petition for U Nonimmigrant Status (U petition), on the basis that the approval was in error because the Petitioner did not submit the required Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), that was properly executed by a certifying official when the Petitioner filed his U petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that his nonimmigrant U status was revoked in error and that the official who signed the Supplement B qualified as a certifying official.

Upon *de novo* review, we will dismiss the appeal.

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 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.

The regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

(h) *Revocation of approved petitions for U nonimmigrant status* –

.....

(2) *Revocation on notice.*

- (i) [U.S. Citizenship and Immigration Services (USCIS)] may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

.....

(B) approval was in error. . . .

Matter of R-F-H-

(ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given that evidence will be within the sole discretion of USCIS. . . .

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of China whom the record of proceedings shows entered the United States without inspection on [REDACTED] 1999, and requested asylum. On or about [REDACTED] 2000, the Petitioner was issued a Notice to Appear before an Immigration Judge, placing him in removal proceedings. On [REDACTED] 2000, he was ordered removed to China *in absentia*, but removal proceedings were reopened on [REDACTED] 2001. On [REDACTED] 2002, the Petitioner's application for asylum and withholding of removal were denied by an Immigration Judge and he was ordered removed. On [REDACTED] 2003, the Board of Immigration Appeals dismissed the Petitioner's appeal and on [REDACTED] 2005, the Board denied the Petitioner's motion to reopen.

On [REDACTED] 2002, the Petitioner was the victim of felonious assault and robbery. Based on his victimization, the Petitioner filed the instant U petition and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), on January 11, 2013, claiming to be the victim of a felonious assault.¹ On October 26, 2013, the U petition and the waiver application were approved. On April 7, 2014, the Director issued the Petitioner a notice of intent to revoke (NOIR) approval of the U petition as it was made in error. The Director indicated in the NOIR that the Supplement B was not signed by the sole designated certifying official for the [REDACTED] and requested that the Petitioner obtain a properly executed Supplement B. On March 30, 2016, the Director revoked approval of the U petition and the waiver application, finding that the Petitioner had not submitted a Supplement B signed by the designated certifying official and that the Petitioner had not responded to the NOIR.

III. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has not shown any error on the part of the Director and has not overcome the Director's ground for denial. Accordingly, approval of the petition will remain revoked.

¹ On January 29, 2009, the Petitioner filed a U petition that was subsequently denied as abandoned.

Matter of R-F-H-

On appeal, the Petitioner notes errors concerning dates in the Director's decision and contests the Director's reference in the denial that he did not respond to the NOIR, asserting that he did respond to the NOIR and that he never received notice that the petition's approval had been revoked until he received notice that his spouse's petition for derivative benefits had been denied. The Petitioner argues that the Director erred procedurally because his response to the NOIR was ignored, and the Petitioner points to apparent errors in the dates on notices from the Director.

The record of proceedings contains the Petitioner's response to the NOIR, showing it was received by U.S. Citizenship and Immigration Services (USCIS) on May 9, 2014. The Petitioner, however, has not shown any prejudice by the Director's citation of incorrect dates or failure to review his NOIR response as the response did not include a Supplement B signed by a designated certifying official. Furthermore, the Petitioner has not been prejudiced because he had an opportunity to rebut the issues presented in the NOIR on appeal.

The Petitioner also disputes the Director's determination that the petition was approved in error because the Supplement B was not signed by the sole designated certifying official. The Petitioner further contends that even if the Supplement B is defective, it is only one component of the U visa petition, which he asserts contains other evidence that demonstrates his eligibility.

The submission of a Supplement B with a U petition is required by 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 U petition "must include" as initial evidence, a Supplement B "signed by a certifying official within the six months immediately preceding the filing of Form I 918." A "certifying official" is defined as 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." 8 C.F.R. § 214.14(a)(3)(i) (emphasis added). The Director revoked approval of the U petition because the Petitioner did not file, as required initial evidence, a Supplement B properly executed by a certifying official as that term is defined by regulation.

The Supplement B submitted by the Petitioner identified [redacted] as the head of the certifying agency, [redacted] and was executed by [redacted]. Although the Supplement B is signed on page three by [redacted] page one is blank in the fields for the name of the certifying official and for the title and division/office of the certifying official. However, at the time the Supplement B was executed on December 17, 2012, [redacted] was the head of the [redacted] and as such, he was the "certifying official" by regulation. *See id.* The record did not contain, and the Petitioner has not submitted any evidence on appeal, that [redacted] had designated [redacted] or any other official within the [redacted] to act as a certifying official on behalf of the agency when the Supplement B was executed.²

² The [redacted] government web site defines [redacted] as [redacted] who perform clerical tasks in a police station or other department unit, command or office. See

(b)(6)

Matter of R-F-H-

On appeal, the Petitioner maintains that when he obtained the Supplement B there was no formal [redacted] policy at all for the U visa certification and precincts investigating qualifying criminal activity had no guidance from the [redacted] so his Supplement B was certified by a proper certifying official under the relevant regulations. To support his contention that the [redacted] had no U certification policy at the time, the Petitioner refers to other sources, including [redacted] his own 2014 joint petition with others requesting the [redacted] publicize procedures to obtain certifications, and a December 8, 2014, notice from the [redacted] about the posting of certification procedures. The Petitioner argues that the [redacted] did not have an official U certification policy until October 2014, after the filing of his petition, and that since there was no formal policy, the individual who signed his Supplement B meets the definition of a certifying official, and he refers to 8 C.F.R. § 214.14(a)(3)(i). The Petitioner maintains that the crime against him occurred where the [redacted] had responsibility as the law enforcement agency, that the head of the [redacted] designated the certifying official, and that the certifying official's attestation satisfies the certification requirements under 8 C.F.R. § 214.14(c)(2)(i). In his case, the Petitioner argues, the Supplement B was signed by [redacted] who was designated by the head of the [redacted] as a certifying official, and that [redacted] was in a supervisory position with direct knowledge of his case and was in the best position to verify factual information.

However, the Petitioner's assertions disregard the plain language of the regulation at 8 C.F.R. § 214.14(a)(3)(i), under which [redacted] as the "head of the certifying agency," was the "certifying official" for the [redacted]. Further, as [redacted] had not then "specifically designated" any other person within the [redacted] to issue U nonimmigrant status certifications on behalf of the [redacted] he was the sole "certifying official" under the definition of the term. *See id.* The Petitioner's contention that the [redacted] qualifies as the certifying agency is without merit. [redacted] is divided into [redacted] geographical areas called precincts. *See* The [redacted] (last visited Aug. 23, 2016). As the [redacted] simply refers to the designation of a geographical area within the [redacted] jurisdiction, it does not qualify as a "Federal, State, or local law enforcement agency." *See* § 214.14(a). Furthermore, the Supplement B itself lists the [redacted] as a subset of the [redacted]

The Petitioner further contends that even if the Supplement B is deemed defective it should not be sufficient to disqualify a U visa applicant because it is only one item among several required as initial evidence, and the Petitioner refers to the required initial evidence for U visa petitions under the U Interim Rule that USCIS is not to consider the Supplement B as "conclusory evidence" that a petitioner "has met the eligibility requirements."³ The Petitioner also refers to 8 C.F.R.

³ *New Classification for Victims of Criminal activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014 (Sept. 27, 2007).

Matter of R-F-H-

§ 214.14(c)(4) which states that USCIS shall conduct a *de novo* review of all evidence submitted, and points to the other evidence submitted in his case.

We may not approve a U petition in the absence of a properly filed Supplement B. The filing of a Supplement B is statutorily mandated and is required by regulation as “initial evidence” as it is a prerequisite for determining eligibility. Although we recognize the difficulties the Petitioner faced in obtaining a properly executed Supplement B from the certifying agency, we lack authority to waive the requirements of the statute, as implemented by regulation. *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). As the Petitioner has failed to provide a Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), he has failed to establish his eligibility for U nonimmigrant classification.

IV. CONCLUSION

As the record does not establish that the Petitioner complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of initial evidence, he 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 the filing a new U petition with a properly executed, original Supplement B that conforms to the stated regulatory requirements.

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *see also 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 R-F-H-*, ID# 89013 (AAO Nov. 18, 2016)