



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

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

MATTER OF U-A-C-E-

DATE: SEPT. 13, 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 Acting Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that the Petitioner did not respond to a Request for Evidence (RFE), for which a response was required by December 1, 2013. Therefore, the Director denied the U petition for abandonment. The Petitioner filed a motion to reconsider,¹ asserting that he did not receive the RFE. The Director dismissed the motion, finding that the Petitioner did not meet any of the three criteria listed at 8 C.F.R. § 103.5(a)(2) for which U.S. Citizenship and Immigration Services may reopen an abandoned petition.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. The Petitioner claims on appeal that he did not receive the RFE and that the Director erred in dismissing his motion.

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

I. APPLICABLE LAW

The regulation at 8 C.F.R. § 103.2(b)(13)(i) states, in pertinent part:

Failure to submit evidence or respond to a notice of intent to deny. If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

¹ The regulation at 8 C.F.R. § 103.2(b)(15) allows for the filing of a motion to reopen a denial due to abandonment, not a motion to reconsider. The Director appears to have accepted the Petitioner’s motion to reconsider as a motion to reopen.

The regulation at 8 C.F.R. § 103.2(b)(15) provides, “A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5.”

II. ANALYSIS

The Director acted within his authority under the regulation at 8 C.F.R. § 103.2(b)(13)(i) to deny the U petition as abandoned. The Director also acted within his authority to dismiss the Petitioner’s motion on the ground that he did not establish that the U petition should be reopened based on any of the three criteria listed at 8 C.F.R. § 103.5(a)(2).

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(15), we do not review the merits of denials due to abandonment.

III. CONCLUSION

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 U-A-C-E-*, ID# 18046 (AAO Sept. 13, 2016)