

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DIS

[REDACTED]

Date: **OCT 22 2012**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

*Applicable Law*

Section 101(a)(15)(U) of the Act 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. The certification must state that: the person signing the certificate is 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 is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or

occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Factual and Procedural History*

The petitioner is native and citizen of Mexico, who claims to have entered the United States in December 1989, without being inspected, admitted or paroled by an immigration officer. On October 17, 2011, the petitioner filed a Form I-918 U petition without the requisite *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently denied the petition due to the lack of initial evidence. The director also noted further deficiencies in the evidence relating to the qualifying criteria for U nonimmigrant status at section 101(a)(15)(U)(i) of the Act, and lack of evidence of admissibility. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner acknowledges that she could not obtain a Form I-918 Supplement B, and her sole contention on appeal is that the director should have issued a Request for Evidence (RFE) requesting the Form I-918 Supplement B prior to denying the petition. In her brief, the petitioner notifies the AAO of her intent to supplement the present appeal with additional arguments and evidence; however, nothing further has been received.

#### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

The petitioner was required to submit a Form I-918 Supplement B as initial evidence that conformed to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i). The petitioner failed to do so. We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. Without the requisite certification, the petitioner cannot establish that she was the victim of qualifying criminal activity and consequently cannot meet any of the eligibility criteria 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).

The director also denied the petition because the petitioner failed to show that she is admissible to the United States, nor did she submit a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, as required pursuant to section 212(d)(3) of the Act. The petitioner does not deny that she last entered the United States without being inspected, admitted or paroled by an immigration officer. Therefore, she is inadmissible under section 212(a)(6)(A)(i) of the Act.

On appeal, the petitioner asserts that the director abused his discretion and committed both legal and factual error by denying her Form I-918 U petition without first issuing her an RFE. However, the petitioner herself notes in her brief that USCIS *has discretion* under the regulation at 8 C.F.R. 103.2(b)(8)(ii) to issue an RFE when initial evidence is missing. Neither the statute nor the regulations governing U nonimmigrant petitions compels U.S. Citizenship and Immigration Services (USCIS) to issue an RFE if initial evidence is missing, as whether to request evidence remains wholly within the director's discretion. The petitioner has failed to demonstrate that there were any legal or factual errors committed in the denial of her petition, and she has failed to show that the director abused his discretion in not issuing an RFE before denying her petition.

*Conclusion*

The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. The petitioner failed to submit the certification required by section 214(p)(1) of the Act. The petitioner is also inadmissible to the United States and did not submit a request for a waiver of inadmissibility (Form I-192). The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.