

(b)(6)

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

Date: JUN 13 2014 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:

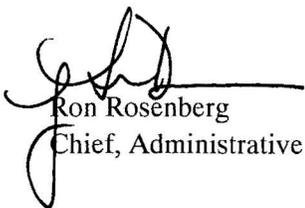
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 and 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.

The director denied the petition because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. In addition, the director noted that the petitioner did not submit a statement regarding her victimization or a copy of her passport, and she is inadmissible to the United States and failed to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). On appeal, the petitioner submits a statement, a Form I-918 Supplement B, additional evidence, and documents already included in the record.

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.

In addition, section 101(a)(15) of the Act defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of "immigrant" at section 101(a)(15) of the Act.

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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who adjusted her status to that of a lawful permanent resident on November 12, 1992. The petitioner filed the instant Form I-918 U petition on September 3, 2013 without a Form I-918 Supplement B. The director subsequently denied the Form I-918 U petition because the petitioner failed to submit a properly executed Form I-918 Supplement B and she did not meet the eligibility requirements for U nonimmigrant classification. The director also noted that the petitioner did not submit a statement regarding her victimization, a copy of her passport, or a Form I-192 to waive her grounds of inadmissibility. The petitioner timely appealed the denial of the Form I-198 U petition. On appeal, the petitioner submits a Form I-918 Supplement B dated January 24, 2014 and claims that she was the victim of domestic violence.

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 based upon lack of required initial evidence.

The petitioner filed her Form I-918 U petition on September 3, 2013 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). The record does not show that a completed Form I-918 Supplement B was filed with the Form I-918 U petition. The petitioner supplemented the record after filing the appeal by submitting a complete Form I-918 Supplement B; however, this late filed evidence may not be considered in these proceedings.¹

Eligibility for a benefit request must be established at the time of petition filing, particularly for individuals seeking U nonimmigrant classification, who are subject to an annual cap on U-1 nonimmigrant status and are placed on a waiting list, by filing date of petition, if they cannot be granted such status due solely to the cap. See 8 C.F.R. §§ 103.2(b)(1), 214.14(d); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The director properly denied the petition due to the lack of required initial evidence and the petitioner's submission of a complete Form I-918 Supplement B after the 30-day appellate briefing period does not cure this defect. According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii): "[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility"

Even if we could consider the Form I-918 Supplement B submitted after the appeal filing and dated January 24, 2014, it would fail to meet the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i), as it was not signed by the certifying official within the six months preceding the September 3, 2013 filing date of the Form I-918 U petition. In addition, it is not clear that the person at the Las Vegas, Nevada Police Department who signed the Form I-918 Supplement B is the official designated to issue U nonimmigrant certifications. According to the regulation at 8 C.F.R. § 214.14(a)(3)(i), "certifying official" means: "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[.]" The person who signed the Form I-918 Supplement B did not provide his or her name and title, providing only an identification number on page 1. The person also did not submit evidence of his or her designation to sign law enforcement certifications on behalf of the Las Vegas, Nevada Police Department. As the petitioner has failed to submit required initial evidence with her Form I-918 U petition, she has failed to establish her eligibility for U nonimmigrant classification and her Form I-918 U petition must remain denied.

Beyond the director's decision, the record shows that when the petitioner filed the Form I-918 U petition on September 3, 2013, she was a lawful permanent resident of the United States, and her status did not terminate until November 26, 2013.² Pursuant to section 214(p)(5) of the Act, an alien seeking U nonimmigrant status may apply for any other immigration benefit or status for which he or she may be eligible. However, USCIS will only grant one immigrant or nonimmigrant status at a time. See 72 Fed.

¹ The petitioner submitted her appeal on December 3, 2013, and the Form I-918 Supplement B, dated January 24, 2014, was received by the Vermont Service Center on February 24, 2014.

² On January 25, 2013, a Notice to Appear was issued to the petitioner, placing her in removal proceedings. On April 23, 2013, an immigration judge ordered the petitioner removed from the United States, and on July, 2013, the Board of Immigration Appeals (Board) dismissed the petitioner's appeal. The petitioner filed a motion to reopen the Board's decision, which the Board denied on November 26, 2013.

Reg. 179, 53014-53042, 53018 (Sept. 17, 2007); 8 C.F.R. § 1.2 (*definition of lawfully admitted for permanent residence*); *see also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). In addition, section 101(a)(15) of the Act defines the term “immigrant” as “every alien except an alien who is within one of the following classes of nonimmigrant aliens.” Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act. Accordingly, the petitioner is also ineligible for U nonimmigrant status because she was a lawful permanent resident when she submitted her Form I-918 U petition on September 3, 2013.

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. Accordingly, the appeal will be dismissed.³

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

³ The director also noted that the petitioner was inadmissible on several grounds and did not establish the essential eligibility criteria at section 101(a)(15)(U)(i) of the Act. The director did not, however, discuss these two issues further because the petition was being denied due to the lack of initial evidence. We also do not discuss the petitioner's inadmissibility or statutory eligibility for U nonimmigrant status, as she has failed to submit the required law enforcement certification at section 214(p)(1) of the Act.