

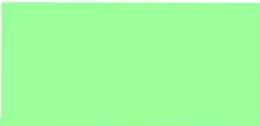
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

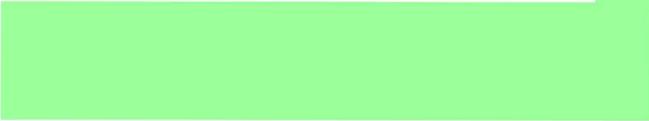


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAY 08 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

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)

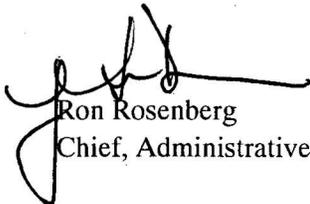
ON BEHALF OF PETITIONER: 

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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the underlying petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. On October 24, 2012, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The petitioner, through counsel, timely filed an appeal with the AAO. The appeal was dismissed as the petitioner did not comply with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. The petitioner, through counsel, timely filed the instant motion with the AAO.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). On motion, the petitioner, through counsel, contends that since the six-month filing requirement for the Form I-918 Supplement B is a “non-jurisdictional rule and can be equitably tolled,” her Form I-918 Supplement B was timely filed. In support of her claim, counsel submits a brief and additional evidence. As the petitioner, through counsel, has submitted documentary evidence to support her new claim, the motion to reopen will be granted.

#### *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, 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 Guatemala who claims to have entered the United States in September 1985 without inspection, admission or parole. On November 17, 2011, the petitioner filed a Form I-918 U petition which included a Form I-918 Supplement B, signed on May 13, 2011.<sup>1</sup> The director denied the petition for lack of initial evidence because the petitioner failed to submit a Form I-918 Supplement B that was signed within the six months immediately preceding the filing of the Form I-918 U petition and the AAO dismissed the petitioner's subsequent appeal on October 25, 2013.

#### *Analysis*

On motion, counsel admits that the petitioner's Form I-918 Supplement B was dated more than six months before the filing of the Form I-918 U petition, but contends that previous counsel misunderstood the applicable regulations. Counsel's argument appears to assert a claim of ineffective assistance of counsel which requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting

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<sup>1</sup> The Form I-918 Supplement B was signed six (6) months and four (4) days prior to the filing of the Form I-918 U petition.

forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*; 857 F.2d 10 (1<sup>st</sup> Cir. 1988).

The Ninth Circuit Court of Appeals has held that strict adherence to *Lozada* is not required when the record clearly shows the ineffective assistance of counsel. *See Castillo-Perez v. I.N.S.*, 212 F.3d 518, 525-27 (9<sup>th</sup> Cir. 2000); *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9<sup>th</sup> Cir. 2000). Counsel's brief statement on motion regarding prior counsel's misunderstanding of the applicable regulations does not clearly show ineffective assistance of counsel, and the petitioner has not complied with any of the *Lozada* requirements. Therefore, the petitioner has not demonstrated that her failure to submit a Form I-918 Supplement B that was signed by the certifying official within six months of filing the Form I-918 U petitioner was due to ineffective assistance of counsel.

Counsel also asserts that the requirement to file the Form I-918 U petition within six months of the date of the Form I-918 Supplement B "is a non-jurisdictional filing requirement that is subject to equitable tolling." She claims that since Congress has not given a "clear statement that the six month filing requirement should be treated as a jurisdictional rule," the time limitation should be treated as non-jurisdictional subject to equitable tolling. *Citing Sebelius v. Auburn Regional Medical Center*, 133 S.Ct. 817, 184 L.Ed.2d 627 (2013). *Sebelius* does not directly address the matter at issue but instead addresses statutes of limitations and equitable tolling, and congressional intent behind whether a filing requirement is jurisdictional.

There is no filing deadline for a Form I-918 U petition. *See* 8 C.F.R. § 214.14(c)(1). Moreover, equitable tolling does not apply to U nonimmigrant status certifications because there is no filing deadline for a Form I-918 Supplement B, only that the law enforcement certification must be included with the filing of the Form I-918 U petition and be "signed by a certifying official within the six months immediately preceding the filing of Form I-918." *See* 8 C.F.R. § 214.14(c)(2)(i). The condition that the Form I-918 Supplement B must be signed within the six month period before the filing date of the Form I-918 U petition was set by USCIS "to seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007). "USCIS believes that this requirement provides petitioners enough time to prepare the necessary paperwork for the petition package, while also precluding the situation where petitioners delay filing the package until some time after the certification is signed, and they cease to be helpful to the certifying agency." *Id.*

Counsel claims that the petitioner diligently attempted to file her Form I-918 U petition timely and even attempted to obtain a new Form I-918 Supplement B from the Houston Police Department but was unsuccessful. The record shows that the petitioner's Form I-918 Supplement B was not signed within six months of filing her Form I-918 U petition. The regulation at 8 C.F.R. § 214.14(c)(2)(i) clearly states that

the Form I-918 Supplement B must be signed by a certifying official within the six months immediately preceding the filing of Form I-918 U petition. The petitioner must meet the statutory and regulatory requirements, as we lack authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

*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 is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

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 is granted. The appeal remains dismissed and the petition remains denied.