

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: **SEP 18 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 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). On appeal, counsel submits a brief 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.

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 claims to have entered the United States on June 5, 2000 without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) on October 22, 2012 with an accompanying Form I-918 Supplement B, signed on April 18, 2012.<sup>1</sup> The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner, through counsel, appealed the denial of the Form I-918 U petition.

On appeal, counsel admits that the Form I-918 Supplement B was dated more than six months before the filing of the Form I-918 U petition but asserts that because it was mailed on October 16, 2012, the director should have accepted it as properly completed.

#### *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.

Counsel claims that because the Form I-918 Supplement B was mailed before the October 22, 2012 filing date of the Form I-918 U petition, it was submitted before its expiration. Under 8 C.F.R. § 103.2(a)(7)(i), "a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format." The six-month expiration period described at 8 C.F.R. § 214.14(c)(2) is calculated from the actual date of receipt of the Form I-918 U petition

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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.

as determined by USCIS. Thus the Form I-918 Supplement B could not have been signed any earlier than April 22, 2012. The date that the petitioner mailed the Form I-918 Supplement B to USCIS is not relevant.

Counsel requests that USCIS disregard the validity period of the Form I-918 Supplement B because it was filed “only two days outside of the 6 month deadline.” The regulations require that the law enforcement certification 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 sometime after the certification is signed, and they cease to be helpful to the certifying agency.” *Id.*

Counsel claims that the petitioner attempted to obtain a new Form I-918 Supplement B from the certifying agency 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). 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. However, the denial of the petitioner’s instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

### *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.

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