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

U.S. Citizenship and Immigration Services

(b)(6)

Date: MAR 1 1 2015 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 Acting 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 failed to establish that she was a victim of qualifying criminal activity and failed to demonstrate that she satisfied the remaining eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel for the petitioner submits a brief statement.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
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> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
>
> (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
>
> * * *
>
> (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 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).

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

> (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:
>
> * * *
>
> (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested[.]
>
> * * *

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 petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity[.]

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 Mexico who claims to have last entered the United States in August, 1997, without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on February 20, 2013. The director subsequently issued a Request for Evidence (RFE), including, among other things, a letter from the certifying official regarding the petitioner's helpfulness in the investigation or prosecution of the criminal activity. The petitioner responded to the RFE by submitting an updated personal statement and a statement from her daughter. The director found the petitioner's response insufficient to establish the petitioner's eligibility and denied the petition accordingly on April 7, 2014. The petitioner has appealed the denial of the Form I-918 U petition.

Qualifying Criminal Activity

The petitioner, in her personal statement, described an incident on August when an unknown assailant came up behind her on the street while she was walking with her daughter. The assailant demanded her purse and pressed a knife against her back. The petitioner recounted feeling fearful that he would hurt her or her daughter. The assailant ran away when the petitioner gave him the purse. The petitioner was robbed of approximately fifty dollars. Security personnel at a party the petitioner had just left contacted the police. The petitioner stated that she relayed what happened to the police who tried to locate the perpetrator but failed. She acknowledged that the police never prepared a police report and indicated she does not know why one was not filed. Instead, the petitioner submitted an uncertified copy of a 911 call record of an incoming call about a robbery of a purse and indicating the victim's name was

The Form I-918 Supplement B that the petitioner submitted was signed on October 4, 2012, by Isaac Captain, Juvenile Investigations, Police Department, in Minnesota (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of felonious assault, and in Part 3.3, cited sections 609.222 and 609.245 of the Minnesota Statutes corresponding to Assault in the Second Degree and Aggravated Robbery, respectively, as the offenses that were investigated and prosecuted. In Part 3.5, the certifying official stated that the petitioner was robbed of her purse at gunpoint. At Part 4, while the certifying official noted that the petitioner possessed information about the cited criminal activities and was requested to provide assistance in the investigation and prosecution of the cited criminal activities, he left blank the question at Part 4.2 inquiring as to whether the petitioner has been, is being or is likely to be helpful in such investigation and/or prosecution. At Part 4.5, the certifying official stated that the petitioner reported the crime and was cooperative.

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Qualifying Criminal Activity

We affirm the director's determination that the petitioner has failed to show that she was a victim of qualifying criminal activity as required under section 101(a)(15)(U)(i) of the Act. *See* Director's Decision at 3. Although the record indicates that the petitioner may have been a victim of robbery, which is not specifically listed as a qualifying criminal activity, it fails to demonstrate that the petitioner was a victim of felonious assault during the same incident. The certifying official stated in the Form I-918 Supplement B that the petitioner was a victim of felonious assault and provided the corresponding Minnesota criminal statutes for second degree assault and aggravated robbery as the criminal activities that were investigated or prosecuted. At Part 3.5, the certifying official stated that the petitioner was robbed at gunpoint. However, the sole record of the August incident in the record, a 911 call record, references only a robbery and does not reference the use of any weapons during the robbery, even though a description of the stolen purse is provided. Furthermore, the certifying official's description of the incident is inconsistent with the petitioner's and her daughter's statements, both of which stated that the assailant robbed the petitioner using a knife, rather than at gunpoint. As the petitioner indicated that there was no police report ever filed in connection with this incident, the record is also unclear as to what records[1] or information the certifying official relied upon in determining in 2012 that the petitioner was a victim of felonious assault in The petitioner was granted an opportunity to provide additional evidence, including police reports and affidavits from police officers and other officials, but none were provided. Given the inconsistencies identified here and the lack of corroborating reports or statements from law enforcement officials, the Form I-918 Supplement B is insufficient by itself to demonstrate that the petitioner was a victim of felonious assault, as contended by the petitioner.[2] The petitioner has, therefore, failed to establish that she was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities

[1] As noted, the only record provided was an uncertified 911 record about a robbery that does not reference the petitioner by her full name as the victim, and does not indicate that a weapon was used or that an assault also occurred during the commission of the robbery on August

[2] We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4).

investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. Moreover, even if the petitioner had established that she was a victim of qualifying criminal activity, her petition would still be denied because she has failed to satisfy this helpfulness requirement.

Section 214(p)(1) of the Act requires a Form I-918 U petition to be accompanied by a certification from a certifying official that states that the petitioner "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). Here, the certifying official did not certify the petitioner's helpfulness in the investigation or prosecution of the criminal activity at Part 4.2 of the Form I-918 Supplement B and, therefore, she has not submitted a law enforcement certification described at section 214(p)(1) of the Act. Although the certifying official indicated at Part 4.5 that the petitioner reported the crime and was cooperative, this is insufficient to satisfy the helpfulness requirement where the official left blank the specific inquiry at Part 4.2 as to whether the petitioner was, is, or is likely to be helpful in the investigation or prosecution of the criminal activity. The petitioner was afforded an opportunity to provide a statement from the certifying official specifically addressing the petitioner's helpfulness, but no such letter was ever submitted. The record, therefore, does not sufficiently demonstrate the petitioner's helpfulness to the certifying agency, and it indicates that the certifying official declined to certify the petitioner's helpfulness.

On appeal, the petitioner asserts that the certifying agency which investigated the criminal incident verified that the petitioner had been helpful on the Form I-918 Supplement B. However, as noted, the certifying official specifically left blank the question at Part 4.2, addressing the petitioner's helpfulness, and thus, the Form I-918 Supplement B is not in conformity with the statutory requirements for such a certification, as implemented by the regulations. We lack the authority to waive the statutorily required certification described at section 214(p)(1) of the Act. Accordingly, the petitioner has failed to demonstrate that she satisfied the helpfulness requirement for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act.

Substantial Physical or Mental Abuse

Although on appeal the petitioner states generally that she submitted sufficient evidence to show the harm she suffered as a result of her victimization, as the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Possession of Credible or Reliable Information Establishing Knowledge Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Conclusion

The petitioner failed to establish that she was the victim of qualifying criminal activity, and thus, she also fails to meet any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petitioner also independently failed to satisfy the helpfulness requirement for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act. Consequently, she is statutorily ineligible for U nonimmigrant status.

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. The petition remains denied.