



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23398610

Date: NOV. 23, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner asserts that she is eligible for U-1 nonimmigrant classification. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

The U-1 classification affords nonimmigrant status to victims of qualifying criminal activity who suffer substantial physical or mental abuse as a result of the crime. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, the petitioner must also possess information about the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of the crime. *Id.*

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’ helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(1). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner filed her U petition in May 2019. The Director denied the U petition for lack of initial required evidence, as the petition was not accompanied by a properly executed Supplement B. On appeal, the Petitioner claims, through counsel, that she submitted a properly executed Supplement B at the time of filing her original U petition. She includes a copy of what she purports to be her original

filing, a Supplement B signed and certified in December 2018, by the Chief Criminal Deputy of the [REDACTED] Prosecuting Attorney's Office in Washington State.

As stated above, the submission of a Supplement B is required by statute at section 214(p)(1) of the Act ("The petition filed . . . under section 101(a)(15)(U)(i) [of the Act] shall contain a certification . . ."). Moreover, as provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), a U petition "must include" as initial evidence, a Supplement B "signed by a certifying official within the six months immediately preceding the filing of" the U petition. Our review of the record does not demonstrate that a Supplement B was filed with the Petitioner's original submission. Because the Petitioner did not file her U petition with the required initial evidence, she is not eligible for U nonimmigrant status under section 101(a)(15)(U) of the Act.¹

The Petitioner argues on appeal that we should reopen the U petition because she did not receive any timely notices regarding her case, and that she became aware of the denial of the U petition after she received the denial her Form I-765, Application for Employment Authorization. At the outset, we note that at the time of the Director's decision, neither the statute, regulations, nor relevant USCIS policy required the issuance of a request for evidence (RFE) where eligibility was not established at the time of filing. *See* 8 C.F.R. § 103.2(b)(8)(ii) (stating that, "[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 . . ."); *see also* USCIS Policy Memorandum PM-602-0163, *Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual, Chapter 10.5(a), Chapter 10.5(b)*1 (July 13, 2018) (effective date September 11, 2018). This policy directive states that, "[i]f all required initial evidence is not submitted with the benefit request, USCIS in its discretion may deny the benefit request for failure to establish eligibility based on lack of required initial evidence." For example, USCIS may deny "[c]ases where the regulations, the statute, or form instructions require the submission of an official document or other form or evidence establishing eligibility at the time of filing and there is no submission." Accordingly, the Director properly exercised discretion and denied the U petition without first issuing an RFE because the Petitioner did not submit required initial evidence. Although we recognize the harsh outcome in this case, 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 both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials).

III. CONCLUSION

The Petitioner filed her U petition without including, as required initial evidence, a properly executed Supplement B, as section 214(p)(1) of the Act and 8 C.F.R. § 214.14(c)(2)(i) require. Accordingly, the Petitioner has not established her eligibility for U nonimmigrant status under section 101(a)(15)(U) of the Act.²

ORDER: The appeal is dismissed.

¹ Although a copy of a December 2018 Supplement B was submitted on appeal, the Petitioner is not able to cure the deficiency, as the Supplement B must be submitted with the initial filing.

² This decision is without prejudice to the filing of a new U petition by the Petitioner with a properly executed Supplement B signed within the six months preceding any such filing.