



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

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

In Re: 26009470

Date: APR. 25, 2023

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. See 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 U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition) because the Petitioner did not include required initial evidence. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act.

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). A certifying official is defined as “[t]he 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 a “Federal, State, or local judge.” 8 C.F.R. §§ 214.14(a)(3).

II. ANALYSIS

The Petitioner, a citizen of India, filed his U petition in November 2016. In the underlying record, the Petitioner submitted a Supplement B certified in May 2016 by a lieutenant in the [REDACTED] County Sheriff's Office, located in [REDACTED] South Carolina. According to parts 3.2 and 3.3 of the Supplement B, the date of the criminal act was December 17, 2015, and the criminal activity investigated or prosecuted was "16-11-330 Robbery and attempted robbery while armed with deadly weapon[.]" The Petitioner also included the associated incident report, dated February 10, 2016, which identifies the Petitioner as the victim and includes the following narrative:

. . . this unit made contact with Deputy [REDACTED] in reference to an arm robbery that was reported to her today by the victim's cousin. The victim advised that . . . he was going in the [REDACTED] grocery store . . . when a black male subject riding a bicycle approached him with a handgun and took \$700.00 from him. . . . The complainant friend advised that they wanted the incident documented. . . .

A supplemental narrative was attached to the incident report and states: "[t]he victim brother stated that the incident happen on this date; 12/1/2015 at 7:30 pm. . . ." In November 2021, the Director issued a notice of intent to deny (NOID) stating, in relevant part, that the [REDACTED] County Sheriff's Office withdrew the Supplement B because the alleged incident was filed by someone other than the victim nearly two months after the alleged incident occurred indicating no realistic cooperation with law enforcement by the Petitioner. The NOID also stated that the [REDACTED] County Sheriff's Office determined that the individual who signed the Supplement B was not a recognized certifying official. The Director reviewed the Petitioner's response to the NOID and denied the U petition, explaining the Petitioner did not submit a properly executed Supplement B as required by 8 C.F.R. § 214.14(c)(2)(i).

On appeal, the Petitioner argues that U.S. Citizenship and Immigration Services (USCIS) provided no explanation why the Supplement B was withdrawn. However, as described above, USCIS notified the Petitioner that the Supplement B was withdrawn in the NOID, provided the reasons why it was withdrawn, and gave the Petitioner an opportunity to submit a Supplement B signed by a qualifying certifying official, satisfying regulatory notice requirements. See 8 C.F.R. § 103.2(b)(16)(i) (stating that, if a decision will be adverse to the petitioner and based on derogatory information of which he is unaware, USCIS is required to advise him of the derogatory information and provide him with an opportunity to rebut the information before a decision is rendered). The Director then repeated the reasons why the Supplement B was withdrawn in the denial because the Petitioner's response to the NOID did not include a Supplement B properly executed by a qualifying certifying official.

The Petitioner also argues that it would be ultra vires and a violation of due process for USCIS to deny the U petition on the basis that the Supplement B was not properly executed. The Petitioner does not define ultra vires or provide clear context for his interpretation of the term. Ultra vires is defined as "beyond the scope of power allowed or granted by a corporate charter or by law." Black's Law Dictionary (11th ed. 2019). Moreover, there are no due process rights implicated in the adjudication of a benefits application. See *Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."). The Petitioner does not cite to any legal precedent to support his assertions that the Director, in following

regulatory guidance and USCIS procedures, violated the Petitioner's due process rights or acted ultra vires. Rather, after making these assertions he presents the below arguments in support.

The Petitioner asserts the lieutenant who signed the Supplement B had the authority to sign. However, the Petitioner provides no credible or probative evidence establishing that the lieutenant had authority to certify the Supplement B.¹ Further, the NOID and denial explained that a reason the Supplement B was withdrawn by the [redacted] County Sheriff's Office was because the lieutenant who signed it was not authorized to sign.

The Petitioner further asserts that neither the regulations nor the Act require the denial of a U petition if the certifying agency withdraws the signature. However, according to the Act, the U petition "shall contain a certification from a Federal, State, or local law enforcement official . . . investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title." Section 214(p)(1) of the Act. Similarly, 8 C.F.R. § 214.14(c)(5)(i) provides that prior to approval USCIS must determine that the petitioner met the requirements for U-1 nonimmigrant status. One of those requirements is the inclusion of a Supplement B certifying the petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. 8 C.F.R. § 214.14(c)(2)(i). Further highlighting the importance and requirement of a certified Supplement B, the regulations allow for the revocation of an approved U petition if a certifying official withdraws the U nonimmigrant status certification. 8 C.F.R. § 214.14(h)(2)(i)(A). In sum, a U petition is not approvable without a properly executed Supplement B that meets the requirements for U-1 nonimmigrant status.

The Petitioner then asserts that the doctrine of apparent authority applies as both he and his counsel reached out to the lieutenant seeking certification of the Supplement B, and the lieutenant signed the Supplement B on his own, therefore the Petitioner, as a third party in dealing with the certifying agency, properly received signature from the certifying agency. Without delving into the doctrine of apparent authority, we note counsel was not the attorney of record at the time of the filing of the U petition. The Petitioner's affidavit submitted on appeal does not speak to the steps he or his attorney took in obtaining a certified Supplement B. Counsel's assertions on the steps taken to obtain the initial Supplement B are unsupported by independent documentation and are thereby not evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence.").²

III. CONCLUSION

The Petitioner filed his 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,

¹ The Petitioner explains that he has sent multiple certification requests to the [redacted] County Sheriff's office without any response and believes the office has ceased signing them. As discussed above, it is the Petitioner's burden to establish his eligibility for the benefit sought by a preponderance of the evidence. The Petitioner was notified that the [redacted] County Sheriff's Office determined there was no realistic cooperation with law enforcement by the Petitioner as he was not identified on the incident report as reporting the alleged incident and the incident was reported two months after the alleged occurrence. The Petitioner's statements about his inability to obtain a new properly executed Supplement B does not cure the record. Rather, his statements support that the original Supplement B was appropriately withdrawn.

² The Petitioner also raises arguments on appeal with respect to his admissibility. However, the Director, did not address the Petitioner's admissibility in the denial and the issue is therefore not procedurally ready for review.

the Petitioner has not established his eligibility for U nonimmigrant status under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.