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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

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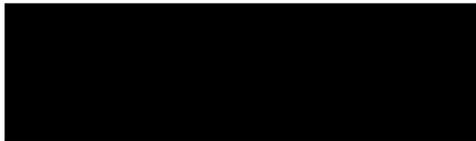
Date: **DEC 02 2011**

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further action. The director again denied the petition and has certified that decision to the AAO for review. The director's decision shall be withdrawn and the matter returned to the director for further action in accordance with the following decision.

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.

*Applicable Law*

Section 101(a)(15)(U) of the Act, provides, in pertinent part, 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 --

(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;

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(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

*Factual and Procedural History*

As our prior decision adequately addressed the factual and procedural history of this matter, we shall repeat only certain facts as necessary. The director initially denied the petition because the certifying agency indicated on the law enforcement certification (Form I-918 Supplement B) that the petitioner, as a witness to the criminal acts of sexual assault and trafficking, was not a victim of qualifying criminal activity. On September 27, 2010, we withdrew the director’s decision on that matter, determining that the Form I-918 Supplement B contained sufficient evidence to establish that during its investigation of the sexual assault and trafficking crimes, the certifying agency detected and investigated the petitioner’s kidnapping allegations. Accordingly, we withdrew the director’s finding that the petitioner was not the victim of a qualifying crime; determined that the petitioner had been the victim of the qualifying crime of kidnapping; and remanded the matter for the issuance of a Request for Evidence (RFE) and a determination of whether the petitioner had suffered substantial physical or mental abuse as a result of having been kidnapped.

The director issued an RFE on February 14, 2011. In the RFE, the director noted that the petitioner had not submitted a Form I-918 Supplement B that “list[s] kidnapping or hostage taking as a crime being certified,” and subsequently concluded that “[the petitioner has] not demonstrated qualifying criminal activity.” The director further stated: “To establish your eligibility under this requirement, you must demonstrate that you were the victim of substantial physical or mental abuse as a result of the certified criminal activity of aggravated sexual assault OR provide a new . . . Form I-918, Supplement B certifying the criminal activity of which you were the victim.” (Emphasis in original). The director

also requested a victim impact statement to demonstrate that that petitioner suffered substantial physical or mental abuse “as a result of qualifying criminal activity of aggravated sexual assault.” The petitioner through counsel responded to the RFE by submitting a victim impact statement.

The director again denied the petition and has certified this decision to the AAO for review. In the Notice of Certification, the director notes that the Form I-918 Supplement B in the record does not certify the crimes of kidnapping or hostage taking and that the only crime that was certified was aggravated sexual assault, of which the petitioner was not a victim. The director concluded that because the petitioner was not a victim of the sexual assault, he has not demonstrated that he was the victim of qualifying criminal activity. The director further indicated that the petitioner failed to submit sufficient evidence that he suffered substantial physical or mental abuse “as a victim of sexual assault and trafficking.” The director properly notified the petitioner that he had 30 days to submit a legal brief or other written statement to the AAO in response to the Notice of Certification.

On certification, counsel submits a brief arguing that the director had no jurisdiction to again look at the issue of whether the petitioner was the victim of qualifying criminal activity, as the AAO had already decided that matter. Counsel maintains that the petitioner has suffered substantial physical and mental abuse as a result of his kidnapping and being a witness to sexual assaults on several females.

### *Analysis*

We again withdraw the director’s determination that the petitioner was not a victim of qualifying criminal activity.

The director found that the petitioner was not the victim of qualifying criminal activity because the crime of kidnapping was not listed at Parts 3.1 and 3.3 of the Form I-918 Supplement B. However, because the regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS the discretion to determine the evidentiary value of a Form I-918 Supplement B, we can look to other parts of the law enforcement certification to determine whether a certifying agency investigated or prosecuted qualifying criminal activity.<sup>1</sup> A review of the Form I-918 Supplement B establishes that the petitioner’s kidnapping, which is a qualifying crime, was investigated during the course of the sexual assault investigation. At Part 3.5 of the Form I-918 Supplement B, the certifying agency stated that the petitioner “was kidnapped and held hostage at gun point for ransom” and that the petitioner “is collaborating with the Sheriff’s Department in the investigation by identifying the individuals that held him.” In addition, the certifying agency noted at Part 4.5 that the petitioner “identified several of the individuals who kidnapped him through a photo line-up” and that the petitioner “also answered the ICE investigator’s questions.” Thus, although it did not specifically list kidnapping at Parts 3.1 and 3.3 of Form I-918 Supplement B, the certifying agency acknowledged at other parts of the form that it detected and

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<sup>1</sup> The term *investigated or prosecuted* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” (Emphasis added). 8 C.F.R. § 214.14(a)(5).

investigated the petitioner's kidnapping in the past and that the petitioner helped investigators when he identified the kidnappers. As the petitioner assisted in the investigation, including the detection of the qualifying crime of kidnapping as stated by the certifying agency on the Form I-918 Supplement B, the AAO finds again that the petitioner in this instance has established that he was a victim of a qualifying crime or criminal activity. Accordingly, the director's determinations to the contrary are again withdrawn.

The record shows that the crime took place in the United States, the petitioner possessed information relating to the criminal activity, and that he helped in the detection and investigation of the qualifying crime of kidnapping. The final eligibility criterion that the petitioner must establish in this matter is whether he suffered substantial physical or mental abuse as a result of the qualifying crime. At the time of our last decision, we noted that the petitioner had not provided a detailed description of the mental abuse he suffered, if any; he failed to provide a detailed probative statement regarding any mental harm that occurred from his experiences; and there was nothing in the record to show that the petitioner suffered permanent or serious harm to his appearance, health, physical, or mental soundness. In response to the director's February 14, 2011 RFE, the petitioner submitted a victim impact statement, addressing the issues that we found deficient at the time of our prior decision. Thus, under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence establishes that the petitioner suffered the requisite, substantial mental abuse. The director's decision to the contrary is withdrawn. The petitioner has met the statutory eligibility requirements for U nonimmigrant status at section 101(a)(15)(U)(i) of the Act.

#### *The Petitioner's Admissibility to the United States*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), in order to waive a ground of inadmissibility.

Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome on notice of certification, we will return the matter to the director for reconsideration of the Form I-192.

#### *Conclusion*

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has been met as to the petitioner's statutory eligibility for U nonimmigrant status under section



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101(a)(15)(U)(i) of the Act. The director's certification decision is withdrawn and the matter will be returned to the director for reconsideration of the petitioner's Form I-192.

**ORDER:** The director's certification decision is withdrawn. Because the petitioner is statutorily eligible for U nonimmigrant classification, the matter is returned to the director for reconsideration of the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) and entry of a new decision on the Form I-918, Petition for U Nonimmigrant Status, which shall be certified to the AAO if adverse to the petitioner.