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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**



814

FILE:  Office: VERMONT SERVICE CENTER Date: FEB 10 2011

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:

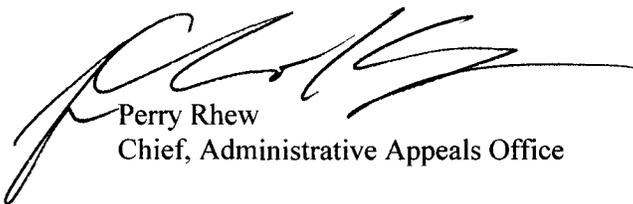


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director determined that the petitioner did not establish that she was helpful in the investigation or prosecution of a qualifying criminal activity because she failed to pursue prosecution. The petition was denied accordingly. On appeal, the petitioner contends through counsel that she meets the qualifications for U nonimmigrant classification because: (1) she was helpful to the certifying agency in the investigation of her former partner’s domestic violence, and she is not required to establish that she also assisted in the prosecution; and (2) her decision to decline to press charges against the perpetrator was not unreasonable.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[es] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The record reflects that the petitioner is a native and citizen of Mexico who first entered the United States in or around 1999. *See Affidavit of* [REDACTED] dated Feb. 12, 2010. The petitioner states that she met her former partner in 2001, and she claims that he began abusing her shortly after they moved in together. *Id.* (describing numerous incidents of physical violence and emotional abuse). After a violent encounter on July 30, 2005, the petitioner called the police and provided a statement regarding her former partner’s abuse, and her fear of him. *Id.*; *see also Police Report*, dated July 30, 2005; *Form I-918 Supplement B*, dated Apr. 21, 2010. When asked whether she wanted to file criminal charges against the perpetrator, the petitioner stated that she did. *See Police Report*. The petitioner claims that after the perpetrator’s arrest, he and his family members threatened to harm her if she provided any additional information to the police. *See Affidavit of* [REDACTED] *Supplemental Affidavit of* [REDACTED] dated Apr. 22, 2010. During the follow-up investigation, the petitioner informed the police that she no longer wanted to pursue charges against her former partner “because she had moved out of the residence and wanted no further problems with [him].” *Follow-Up Investigation Report*, dated Oct. 10, 2005; *Form I-918 Supplement B*. The prosecutor declined to accept the charges against the perpetrator due to the petitioner’s lack of prosecution. *Follow-Up Investigation Report*.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on March 9, 2010. On April 14, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit a Form I-918 Supplement B with an original signature, as well as additional evidence in support of her claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's helpfulness to the certifying agency because she "failed to pursue prosecution." The director denied the petition on this ground, and the petitioner filed a timely appeal.

Analysis

The petitioner correctly contends that the statute does not require a victim to be helpful to the certifying agency in both the investigation *and* the prosecution of the crime. *See Brief on Appeal* at 3. However, as stated in the director's decision, the regulations require the petitioner to show that "since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). Here, the certifying agency requested assistance in order to present the petitioner's domestic violence case to the district attorney for prosecution "due to the serious charge." *Follow-Up Investigation Report*. However, the petitioner signed a "Victim's Refusal to Prosecute Form," and the prosecutor declined to accept the charges. *Id.* Accordingly, the petitioner failed to provide reasonably requested information and assistance to the certifying agency. *See* 8 C.F.R. § 214.14(b)(3); *Form I-918 Supplement B*, Part 4.4, 4.5 (leaving blank the question regarding whether the victim unreasonably refused to provide assistance, and stating that "the victim reported the assault immediately after it occurred, however declined to pursue charges"); *see also Supplementary Information*, 72 Fed. Reg. at 53019.

The petitioner contends that her decision to decline to press charges against the perpetrator was reasonable because he "was already in criminal custody and facing a lengthy prison sentence on drug trafficking charges." *Brief on Appeal* at 4. The petitioner also explained that although she now regrets not pressing charges, at the time, she was afraid that the perpetrator would kill her for reporting him to the police. *Supplemental Affidavit of [REDACTED]* at ¶ 36. While the petitioner's explanation is credible and reasonable, the term "reasonable" in the regulation modifies the law enforcement request for assistance, and does not refer to the victim's motivation for declining to assist. *See* 8 C.F.R. § 214.14(b)(3) (requiring proof that the victim "has not refused or failed to provide information and assistance reasonably requested"); *Supplementary Information*, 72 Fed. Reg. at 53019 ("excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested"). Accordingly, the petitioner's refusal to assist with the certifying agency's reasonable efforts to prosecute the qualifying criminal activity precludes satisfaction of the regulatory requirement.

The petitioner claims that she is now "willing to provide any information [she] can to law enforcement to investigate and prosecute any of [the perpetrator's] criminal activity and keep [her]self, [her] family, and the community safe," *Supplemental Affidavit of [REDACTED]* at ¶ 40. Her present willingness to help law enforcement does not overcome the ground for denial of this petition. The record lacks any evidence that the certifying agency has reopened its investigation or reconsidered


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prosecution of the qualifying criminal activity upon which this petition is based. Rather, the record shows that the certifying agency closed the case in 2005 after the petitioner failed to provide reasonably requested assistance. Consequently, the petitioner has not met the helpfulness requirement as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

Although the petitioner suffered substantial abuse as the victim of a qualifying crime, she did not provide continuing assistance to the certifying agency when reasonably requested, as required by 8 C.F.R. § 214.14(b)(3). Accordingly, the petitioner is ineligible for U nonimmigrant classification.

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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.