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U.S. Citizenship  
and Immigration  
Services

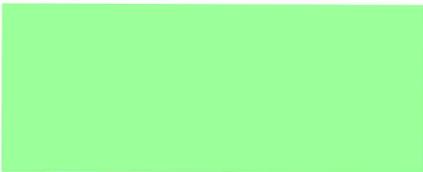


Date: **AUG 13 2014** Office: VERMONT SERVICE CENTER FILE: 

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).

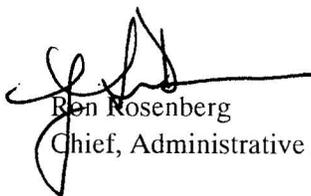
ON BEHALF OF PETITIONER:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ben Rosenberg".

Ben Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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.

The director denied the petition because the petitioner failed to establish that she suffered substantial physical or mental abuse as a result of her victimization or that she was helpful to law enforcement. On appeal, counsel submits a statement on the Notice of Appeal (Form I-290B), and indicates that a brief or other evidence will be submitted within 30 days, or by January 15, 2014. As of the date of this decision, however, the AAO has received no additional statements or evidence.

*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[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

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 . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

\* \* \*

(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[.]

\* \* \*

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 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).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *Investigation or prosecution* "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."

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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 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 initially entered the United States in 1993 without inspection, admission or parole. In December 2004, the petitioner departed the United States and reentered in January 2005, without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 2, 2012. On May 6, 2013, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation and/or prosecution of qualifying criminal activity and that the crime listed on the law enforcement certification was a qualifying crime. In addition, the director requested an updated or newly issued Form I-918 Supplement B, a detailed victim statement, and a copy of a valid passport or border crossing card. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that USCIS erred in determining that the petitioner did not establish her eligibility as a victim of qualifying criminal activity or that she was helpful in the investigation or prosecution of qualifying criminal activity, when the evidence demonstrates that she suffered abuse from her ex-husband and that she cooperated with law enforcement.

#### *Claimed Criminal Activity*

In her declarations, the petitioner recounted that she started dating her ex-husband in May 1993, when she was 16 years of age, and he began abusing her in October 1993. He continuously physically and mentally abused her, and in April 1994, she miscarried because of the abuse. She was afraid to tell her

mother about the abuse and suffered alone. In December 1995, she gave birth to her oldest daughter, and the day she came home from the hospital, her ex-husband pulled her by her hair while she was holding their newborn baby, and told her to “stay inside [the bedroom] and not come out.” In September 1997, she married her ex-husband and also became pregnant but during her sixth month of pregnancy, she “noticed that something was wrong” and asked her ex-husband to take her to the doctor but he refused. She finally had her sister take her to the doctor and the fetus was diagnosed with abnormalities. Three weeks later, her water broke and while she was in labor, her ex-husband dropped off her oldest daughter at the hospital and disappeared for three days. Six or seven hours after the baby was delivered, the baby was determined to be brain dead and the petitioner was left on her own to decide to take the baby off life support. When the hospital called and told her that the baby had died, she started packing up all the baby clothes and items. When her ex-husband saw her crying, he began to beat her but she did not call the police. Her ex-husband continued to abuse her once or twice a month, and her children witnessed the abuse. She finally left her ex-husband, obtained a temporary restraining order, and divorced him.

On June 4, 2011, her ex-husband called her oldest daughter and told her that he wanted to see her and her siblings. The petitioner’s oldest daughter did not want to go with her father, but the youngest daughter did. Even though there was a restraining order against him, the petitioner’s ex-husband came to the house and picked up their youngest daughter for the weekend. She called the police, but the police told her that there was nothing they could do since he was allowed to see his children. On June 5, she found out that her ex-husband had gone to Los Angeles and left their daughter with his mother. She went to pick up their youngest daughter from her grandmother’s house and her ex-husband called upset that she had picked up their daughter. He threatened her over the phone, saying he was “going to come and kill [her].” She hung up on him but he continued to call and text her with more threats. At this time, she was three months pregnant and she began to feel pain in her abdomen. She went to the hospital and the doctor said she was “nervous.” She told the doctor about her ex-husband calling and threatening her, and he told her to call the police. She did not want to call the police because “it would make matters worse for [her] because [her ex-husband] would become more upset.” The doctor said he had to notify the police because her life was in danger. A police officer came and took her statement but the officer did not speak Spanish and she only speaks a little English. The doctor recommended that she get a more rigid restraining order and “[t]o this day that order is still in place.”

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] California, Police Department (certifying official), on October 1, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to California Penal Code (CPC) §§ 242 and 243(e), battery and domestic battery respectively, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that on June 4, 2011, the suspect “violated a domestic violence protective order” by calling and threatening “to beat and kill” the petitioner. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner is afraid that the suspect “may kill her.”

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### Analysis

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the director's decision of November 15, 2013 will be withdrawn.

#### Substantial Physical or Mental Abuse

When denying the petition, the director noted that the petitioner's statement regarding the incident on June 4, 2011 contradicted the police reports in the record. Therefore, the director found that the reliability of the petitioner's victim statement was diminished, and she did not establish that she suffered substantial physical and/or mental abuse based on her victimization. In addition, the director noted that the police report for the incident indicated that the crimes investigated were criminal threats and violation of a domestic violence order, not battery or domestic battery.

The petitioner submitted several statements describing the years of abuse suffered by her ex-husband, the facts of her victimization during the incident in June 2011, and its impact on her mental and physical health. In her statement dated September 14, 2010, the petitioner claimed that her ex-husband still stalks and mistreats her. According to the petitioner's statements, she was pregnant at the time that her ex-husband violated the domestic violence order and the stress caused her to seek medical attention; the doctor diagnosed her pregnancy as high-risk and recommended that she change her phone number; and she fears that if she is removed from the United States, her children's lives will be in danger from her ex-husband. In her statement dated May 4, 2010, the petitioner explained that because of the abuse she has suffered, she is "scared, worried and depressed."

In a statement dated May 4, 2010, therapist [REDACTED] stated that the petitioner recounted to her how she "suffered domestic violence by her ex-husband," she was "sad and stressed out," and she feared running into her ex-husband. Ms. [REDACTED] indicated that the petitioner suffers from depressed mood, low self-esteem, concentration and attention problems, and lack of motivation, and she diagnosed the petitioner with depression. In a mental health evaluation, therapist [REDACTED] stated that according to the petitioner, the petitioner fears that her ex-husband will discover where she lives and start stalking her again. Ms. [REDACTED] stated that based on the meeting that she had with the petitioner, the petitioner has many qualities of a person with Post Traumatic Stress Disorder (PTSD).

A preponderance of the relevant evidence demonstrates that the petitioner suffered substantial mental abuse as the result of the certified criminal activity. The evidence in the record, including the Form I-918 Supplement B, the temporary restraining orders and police reports, mental health documents, and the statements from the petitioner provide probative and credible details of the certified crime as well as other related domestic violence activities perpetrated against her by her ex-husband, who was also the perpetrator of the certified criminal activity. The evidence documents a long history of domestic violence perpetrated by the petitioner's ex-husband against the petitioner and the certified criminal activity aggravated the petitioner's pre-existing depression. The totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, an alien must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On the law enforcement certification, the certifying official indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying domestic violence criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. According to an attached police report, the petitioner called the police to report “verbal threats . . . against her life” by her ex-husband. The report stated the petitioner had a “valid protective order, stemming from a domestic violence incident,” and her ex-husband violated the order by threatening to beat and kill the petitioner. The report indicated that the petitioner had called the police for prior incidents but she stated the police never investigated those incidents. The responding officer noted that the petitioner did not want to contact the police but she did have a valid protective order against her ex-husband. The case was forward to the district attorney’s office to review.

In his denial decision, the director stated that other than the Form I-918 Supplement B, the petitioner did not submit any other evidence of her helpfulness to law enforcement. The director noted that the police report indicated that the petitioner did not want to contact the police or report the incident, and it was a doctor who reported his concerns to the police.

In this case, the record demonstrates that the petitioner was helpful to the certifying agency in the detection and investigation of domestic violence, a qualifying crime of which she was the victim. The record contains a police report which identifies the petitioner as the victim and indicates that she gave a statement. In addition, the certifying official indicated on his law enforcement certification that the petitioner promptly called the police and helped with the investigation.

The statute and regulations do not require the petitioner to be helpful in both the investigation and prosecution of the qualifying criminal activity, or for the investigation or prosecution with which the alien assists to result in a criminal conviction. It is only the alien’s assistance in the investigation or prosecution which is required. Section 101(a)(15)(U)(i)(III) of the Act. The petitioner’s initial reluctance to report the incident does not negate her assistance in the investigation into her ex-husband’s criminal activity, and there is no evidence that the petitioner refused or failed to provide reasonable requests from the certifying agency for her assistance. The preponderance of the relevant evidence of record demonstrates that the petitioner has been helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act. The director’s contrary determination is withdrawn.

*Admissibility*

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 a 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 U petition. *See Decision of the Director*, dated November 15, 2013. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 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, we will return the matter to the director for reconsideration of the Form I-192.

*Conclusion*

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).

**ORDER:** The director's decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.