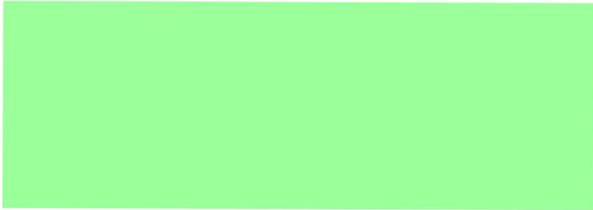




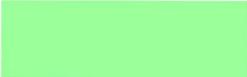
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 19 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,


Ron 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 The director's decision will be withdrawn and the matter returned for issuance of a new decision.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 after determining that the petitioner had not established that she was a victim of qualifying criminal activity. On appeal, the petitioner through counsel submits a statement and background materials, asserting that the petitioner had established that she is a victim of the qualifying criminal activity of domestic violence.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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;

* * *

(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: . . . domestic violence; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

* * *

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

* * *

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. . . ;
- (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. . . ;
- (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. . . ; and
- (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 [U.S. Citizenship and Immigration Services (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 last entered the United States in 2006 by using fraudulent documents to obtain admission. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status

Certification (Form I-918 Supplement B) and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on May 14, 2013. On January 28, 2014, the director issued a Request for Evidence (RFE) that the claimed criminal activity against the petitioner is substantially similar to one of the qualifying criminal activities enumerated under section 101(a)(15)(U)(iii) of the Act. The petitioner responded to the RFE with an updated Form I-918 Supplement B. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on March 7, 2014, concluding that the petitioner had not established that she was a victim of the claimed qualifying criminal activity of domestic violence, and, therefore, was unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner appealed the denial of the Form I-918 U petition. On appeal, counsel asserts that the petitioner demonstrated that she is the victim of the qualifying criminal activity of domestic violence, as indicated by the certifying official on the updated Form I-918 Supplement B.

Claimed Criminal Activity

The petitioner, in her personal statement, indicated that she was in an abusive marital relationship with her husband, M-J-¹. She stated that following the birth of the couple's daughter in 1999, M-J- began using marijuana heavily and became emotionally and verbally abusive. The drug use increased over the next decade. After M-J- became unemployed in 2006, he started using crystal methamphetamine and became even more abusive with extreme mood swings. The petitioner recalled sleeping in the bathroom with her daughter during her husband's rages and living in constant fear that he would take her daughter and leave. In 2009, the petitioner gave birth to the couple's son who was born with Down Syndrome and epilepsy, resulting in daily seizures. Due to her son's inability to walk or speak intelligibly, the petitioner was unable to work as she had to provide for his daily care. The petitioner stated that her husband used her financial dependence on him to dominate her. In 2011, when the family started receiving notices regarding overdue rent, the petitioner asked M-J- to pay the rent. M-J- responded by punching walls and pushing and screaming at the petitioner. The petitioner recounted how her husband's drug abuse increased and how he used his salary and stole family money for drugs. During this time, the petitioner came home one day to find M-J-'s drugs next to their son's food while M-J- was babysitting their children. The petitioner stated that when she confronted him, her husband threatened her with violence, screamed at her, and blocked her into a chair, stopping only because their daughter walked into the room. The petitioner moved out of the home and obtained a domestic violence restraining order against her husband. When M-J- violated the order by contacting her, the petitioner reported the violation to police and agreed to assist in the prosecution.

The Form I-918 Supplement B that the petitioner submitted was signed on December 17, 2012 by Sergeant [REDACTED] Police Department, [REDACTED] California (certifying official). In Part 3.1, which inquires about the criminal activity of which the petitioner was a victim, the certifying official checked the box for "other" and indicated the criminal activity as a violation of a Domestic Violence Restraining Order (DVRO). This was amended in an updated Form I-918 Supplement B to indicate that the petitioner was also a victim of the criminal activity of domestic violence. In Part 3.3, the certifying official cited section 166.4 of the California Penal Code (CPC), which relates to the offense of

¹ Name withheld to protect individual's identity.

Contempt Disobey Court Order, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the perpetrator violated a domestic violence restraining order issued by a court by telephoning the victim on [REDACTED] 2011. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, it indicates that the petitioner suffered emotional injuries but did not sustain any physical injuries. In Part 4.5 of the form, the certifying official stated that the petitioner provided a detailed statement, assisted the police in making a pretext call to the perpetrator and identifying the perpetrator, and requested prosecution.

Analysis

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the director's decision to deny the petition on the stated grounds.

The petitioner has demonstrated that she is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, namely domestic violence. Although the Form I-918 Supplement B initially submitted indicated that the criminal statute for the offense committed was Contempt Disobey Court Order, the certifying official noted that the relevant criminal activity was a violation of a domestic violence restraining order. Further, in response to the director's January 2014 RFE, the petitioner submitted an updated original Form I-918 Supplement B in which the certifying official amended Part 3.1 to specify that the petitioner was a victim of domestic violence. Nothing in the record contradicts the certifying official's certification of the criminal offense as a domestic violence offense. To the contrary, the record contains a copy of the restraining order issued [REDACTED], 2011, which the perpetrator violated and bars the latter from physically assaulting, threatening, harassing, stalking, and contacting the petitioner, or directly or indirectly obtaining through others the petitioner's address. A subsequent restraining order issued [REDACTED], 2011, following a court hearing, includes a Child Custody and Visitation Order, which indicates that the court found the perpetrator to have had a history of domestic violence and child abuse. Further, the restraining orders issued by the court against the perpetrator in favor of the petitioner all indicate they were issued for "domestic violence prevention."

Additionally, as noted by counsel, the qualifying criminal activities set forth in section 101(a)(15)(U)(iii), including domestic violence, are not listed as specific statutory violations but rather in more broad terms, allowing for the possibility that varying state criminal statutes may name an offense differently than those on the statutorily enumerated list. 72 Fed. Register 53014, 53018 (Sept. 17, 2007). The record here provides ample evidence that the underlying criminal offense that resulted in the restraining order was classified as a domestic violence offense under state laws by the certifying agency and that the petitioner was a victim of such offense. Consequently, the record demonstrates that the petitioner was a victim of the qualifying criminal activity of domestic violence, and we withdraw the director's determination on this issue.

As noted, the director also determined that the petitioner was unable to meet any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act. However, as that determination was based solely on the director's finding that the petitioner had not established that she was the victim of qualifying criminal activity of

domestic violence, which we have now withdrawn, we will return the matter to the director to reconsider the petitioner's eligibility under section 101(a)(15)(U)(i) of the Act.

Admissibility

Additionally, 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 petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for the waiver of inadmissibility since her underlying Form I-918 U petition had been denied. 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 as well.

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 and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.