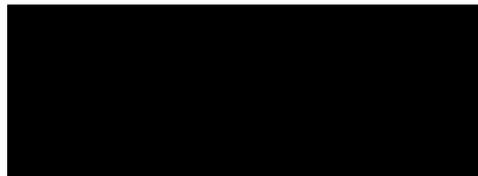


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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



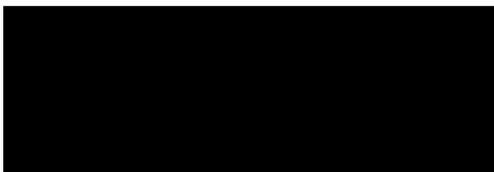
D14

FILE:  Office: VERMONT SERVICE CENTER Date: DEC 28 2010

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:

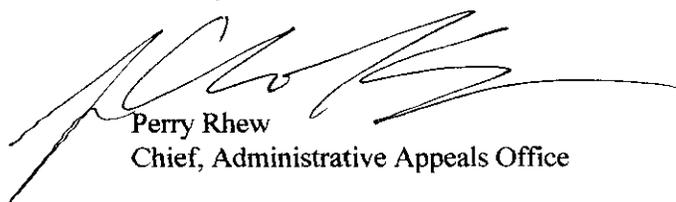


INSTRUCTIONS:

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) 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 did not establish 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. The petitioner appealed the director's decision by filing a Form I-290B, Notice of Appeal or Motion, on which she indicated that she would submit a brief or additional evidence within 30 days. In a June 15, 2010 letter, counsel states that the petitioner wishes to rest on the evidence and arguments she had previously made in support of the petition, and attaches copies of her response to the director's Notice of Intent to Deny (NOID).<sup>1</sup>

#### *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;

\*\*\*

- (iii) the criminal activity referred to in this clause is that involving one or more of the following

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<sup>1</sup> Counsel also notifies the AAO that the petitioner has filed another U petition and asks us to hold the appeal in abeyance until a decision is made on the petitioner's most recent U petition filing. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). We find no reason to hold our decision on this appeal in abeyance, as the service center director's decision on the second U petition filing has no bearing on whether the record in the instant matter supports a conclusion that the petitioner is eligible for U nonimmigrant status.

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).

\* \* \*

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who states that she last entered the United States in April 1994. In

March 2006, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On May 22, 2006, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action, which was subsequently extended until June 24, 2010. The petitioner filed the instant Form I-918 U petition on April 10, 2008. On February 12, 2010, the director issued a Notice of Intent to Deny (NOID), which informed the petitioner that the evidence was insufficient to show her helpfulness to law enforcement authorities and asked the petitioner to submit police reports, court transcripts, or other statements and documents relevant to the issue of the petitioner's helpfulness. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

#### *Helpfulness to Law Enforcement*

When filing her request for U nonimmigrant status and interim relief in March 2006, the petitioner submitted a copy of an electronic mail message from Detective [REDACTED] Police Department, [REDACTED] Washington, dated November 9, 2005. In her message, Detective [REDACTED] stated the following:

[The petitioner] contacted the [REDACTED] Police Department through her Attorney. It was reported that [the petitioner] was disclosing that her husband raped her 9 years ago. She reported that she has been separated from her husband since 1996. [The petitioner] reported on going domestic violence acts against her during the relationship. I took a case investigation and forwarded it to our Prosecutor's office in [REDACTED] County for review. The Prosecutor's [sic] reviewed the case and declined to prosecute because the statute of limitations had expired.

When filing the petitioner's Form I-918 U petition in April 2008, counsel indicated in her cover letter that because the petitioner was not required to submit a new law enforcement certification, the petitioner was relying on the previously-submitted electronic message from Detective [REDACTED] for the law enforcement certification as defined at 8 C.F.R. § 214.14(a)(12).

In his February 2010 NOID, the director notified the petitioner that she had not demonstrated her helpfulness to law enforcement authorities and requested the submission of information or evidence to satisfy this requirement. In response, counsel stated that the petitioner had cooperated with law enforcement authorities to the fullest extent possible but that given the statute of limitations, the authorities could not pursue the matter and, therefore, the petitioner was unable to show that she had been helpful. Counsel also maintained that officials from USCIS and the Office of Immigration Litigation (OIL) assured her that granting U nonimmigrant status to the petitioner would not hinge on whether an investigation into or prosecution of her claims of domestic violence actually occurred. Counsel averred that it was a violation of the petitioner's due process rights, as well as arbitrary and capricious, for USCIS to deny the petitioner's Form I-918 U petition for failure to establish that she had

been helpful to law enforcement authorities when both USCIS and OIL officials had assured the petitioner that the electronic message from Detective [REDACTED] would suffice.

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, U.S.C. § 1101(a)(15)(U)(i)(III); 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). In this case, the electronic message from Detective [REDACTED] does not establish the petitioner's helpfulness to law enforcement authorities. Detective [REDACTED] states that she "took a case investigation" from the petitioner, but does not clarify whether she investigated the petitioner's claims or merely transcribed a report of the incidents that the petitioner described. Although Detective [REDACTED] indicates that the prosecutor reviewed the report that she had prepared, there is no evidence that the prosecutor's office investigated the petitioner's allegations before declining to prosecute the case. Accordingly, the petitioner has not established that she was helpful to law enforcement authorities as required by section 101(a)(15)(U)(i)(III) of the Act.

Counsel contends that it was a violation of the petitioner's due process rights, as well as arbitrary and capricious, for USCIS to deny the petitioner's Form I-918 U petition for failure to establish that she had been helpful to law enforcement authorities when both USCIS and OIL officials had assured the petitioner that the electronic message from Detective [REDACTED] would suffice. Contrary to counsel's assertion, the record does not show that USCIS or OIL ever assured the petitioner or counsel that the electronic mail message would meet the helpfulness requirement for her Form I-918 petition. Rather, in his January 9, 2006 letter to counsel, [REDACTED] of OIL stated that the electronic mail message would satisfy the certification requirement only "[f]or purposes of granting interim relief in the form of deferred action." In her February 13, 2006 electronic mail message, [REDACTED] of USCIS stated that the agency would accept Detective [REDACTED] message as a law enforcement certification only "for purposes of an application for U interim relief." A grant of U interim relief only established *prima facie* eligibility for U nonimmigrant classification pending publication of the implementing regulations. 8 C.F.R. § 214.14(a)(13). The grant of U interim relief does not, in itself, establish the alien's eligibility for U nonimmigrant classification or bind USCIS to approve the alien's subsequently filed Form I-918. *See* 8 C.F.R. § 214.14(c)(4) (USCIS is not bound by its prior factual determinations and will determine in its sole discretion the evidentiary value of previously submitted evidence). *See also* Preamble to the U Interim Rule, 72 Fed. Reg. 53014, 53026 (noting that a grant of interim relief "does not constitute a binding determination that any given eligibility requirement had been proven.").

The petitioner has not established that the denial of the petition was erroneous or that any resultant prejudice violated her right to due process. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). The petitioner bears the burden of proof in these proceeding and must establish, by a preponderance of the evidence, that she is eligible

for U nonimmigrant classification. The director's decision was neither arbitrary nor capricious, as he analyzed the relevant evidence and provided a factual foundation for his finding that the petitioner failed to establish her helpfulness to law enforcement authorities. Prior to denying the petition, the director issued a NOID notifying the petitioner of the deficiency and providing her with an opportunity to respond. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case.

*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 not been met as to the petitioner's statutory eligibility for U nonimmigrant status.

**ORDER:** The appeal is dismissed. The petition remains denied.