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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

**PUBLIC COPY**

D14

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

NOV 18 2010

IN RE: Petitioner: [REDACTED]

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:

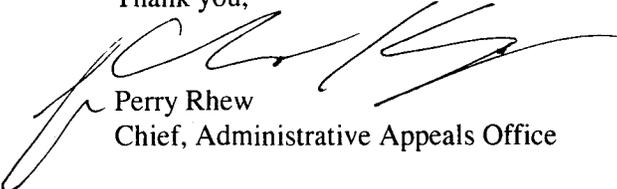
[REDACTED]

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed 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 denied the petition because the petitioner did not submit a properly completed law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification), and consequently did not meet any of the eligibility requirements at section 101(a)(15)(U)(i)(I)-(IV) of the Act. *See Decision of the Director*, dated Mar. 15, 2010. On appeal, the petitioner contends through counsel that she meets all of the statutory requirements for U nonimmigrant classification. *See Brief on Appeal*, dated Apr. 16, 2010. Further, the petitioner contends that the regulatory requirement for Form I-918 Supplement B is ultra vires to the statute. *Id.*

*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). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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[.]

“The term ‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9).

A direct victim of a qualifying criminal activity “generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). Additionally, “where the direct victim is deceased due to murder or manslaughter,” certain family members may be considered indirect victims of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(i).

Further, section 214(p) of the Act, 8 U.S.C. § 1184(p), provides that a petition for U nonimmigrant classification must contain a certification of helpfulness from a certifying agency. Specifically, the petitioner must submit:

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).

Pursuant to the regulations, a petitioner must file a Form I-918, Petition for U Nonimmigrant Status, to request U nonimmigrant classification. 8 C.F.R. § 214.14(c)(1). The Form I-918 must be accompanied by certain supporting documentation or “initial evidence,” including:

Form I-918, Supplement B, “U Nonimmigrant Status Certification,” signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a

victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

8 C.F.R. § 214.14(c)(2)(i).

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 36-year-old native and citizen of Mexico. She claims that she first entered the United States without being admitted or paroled in or around 1997. *See Affidavit of Esmeralda Quevedo Alvarez*, dated Feb. 25, 2008. The petitioner states that after her arrival in the United States, she was subjected to substantial physical and mental abuse by her former boyfriend. *See id.*; *see also Supplemental Affidavit from [REDACTED]*, dated Nov. 18, 2009; *Domestic Violence Assessment*, dated Feb. 11, 2008. On July 20, 2000, a drug-related homicide was committed at the petitioner's residence, and her boyfriend was one of the individuals charged with the crimes. *See Affidavit of [REDACTED]*, dated Aug. 1, 2001. The petitioner, who was in the home at the time of the murder, was interviewed by the authorities, and she provided a witness statement. *Id.*; *see also Affidavit of [REDACTED]*

[REDACTED] The petitioner states that she returned to Mexico approximately one week after the murder because her boyfriend told her that she would be killed if she remained in the United States. *See Affidavit of [REDACTED]*

In or around June, 2001, the petitioner reentered the United States without being admitted or paroled. *Affidavit of [REDACTED]* On August 1, 2001, the U.S. Attorney's Office filed an application for an arrest warrant for the petitioner as a material witness in the prosecution of the drug-related homicide. *See USA v. Macias, Gabino*, No. [REDACTED] (D. Idaho Aug. 1, 2001) (Application for Arrest Warrant of Material Witness). The petitioner states that she provided some information to the authorities, but that she was afraid that her boyfriend would harm her family if she fully and truthfully disclosed what she knew. *See Affidavit of [REDACTED]*

[REDACTED] The petitioner states that she is now prepared to provide additional information about her former boyfriend to the authorities. *Id.*

In 2005, the petitioner was placed in removal proceedings, *see Notice to Appear*, dated October 31, 2005, and her next hearing before the immigration court is scheduled for August 19, 2011. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on February 28, 2008. The Form I-918 was not accompanied by a Form I-918 Supplement B signed by a certifying official. On August 26, 2009, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit the required law enforcement certification, and to demonstrate that she met all of the requirements for U nonimmigrant classification. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner filed a timely appeal.

### *Analysis*

Counsel contends that the petitioner qualifies for U nonimmigrant classification because she has suffered substantial abuse as the victim of the qualifying crimes of domestic violence, rape, witness tampering, felonious assault, and obstruction of justice. *See Brief on Appeal*. Additionally, counsel claims that the petitioner has reasonably cooperated with the authorities in the investigation and prosecution of her former boyfriend. *Id.* Further, counsel contends that the affidavit from a DEA Agent and correspondence from an Assistant U.S. Attorney satisfy the law enforcement certification requirement, and that the petitioner is not required by statute to provide a certification on Form I-918 Supplement B. *Id.*

Here, the petitioner has failed to establish that she is eligible for U nonimmigrant classification under the Act. Specifically, although the petitioner claims that she is the direct victim of the crimes of domestic violence, rape, witness tampering, felonious assault, and obstruction of justice, she has not provided a Form I-918 Supplement B certifying that she is a victim of these crimes, and that these crimes have been or are being investigated or prosecuted by a certifying agency as required by the statute and regulations at sections 101(a)(15)(U)(i)(I), (III) and section 214(p) of the Act, and 8 C.F.R. § 214.14(c)(2)(i). Moreover, although the record shows that the petitioner has assisted law enforcement in the investigation and prosecution of a drug-related homicide, as a witness to the murder of an unrelated individual, she does not qualify as a direct or indirect victim of the qualifying crime of murder. *See* 8 C.F.R. § 214.14(a)(14)(i) (providing that an adult victim's spouse and children under 21 years of age will be considered indirect victims of the qualifying crime of murder).

Because U.S. Citizenship and Immigration Services lacks the authority to waive the statutorily required law enforcement certification, the petitioner is not eligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act. *See* section 214(p) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Further, the AAO has no authority to deem the regulatory requirement to file a law enforcement certification on Form I-918 Supplement B ultra vires to the statute. *See, e.g., Matter of Hernandez-Puente*, 20 I. & N. Dec. 335, 339 (BIA 1991) (stating that "it is not within the province of [the BIA] to pass on the validity of the statutes and regulations" it administers); *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Finally, even if the statements of the DEA agent and Assistant U.S. Attorney were acceptable in lieu of the Form I-918 Supplement B, those statements would be insufficient to establish the petitioner's eligibility because they do not establish that she was a victim of the homicide or any other qualifying criminal activity.

*Conclusion*

Although the petitioner has provided assistance to officials in the investigation and prosecution of a drug-related homicide, the petitioner has not shown that she has suffered substantial abuse as a victim of a qualifying crime. Accordingly, the petitioner is not eligible for U nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act. 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.