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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

FILE:



Office: VERMONT SERVICE CENTER Date:

SEP 23 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 a fee of \$585. 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. On appeal, counsel submits a brief, re-submits the petitioner's October 27, 2009 statement, and a new psychological assessment and recommendation.

*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;

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(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: 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.”

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

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

- (i) 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
- (ii) A Federal, State, or local judge.

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(5) *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.

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(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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.

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;

(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. The alien must possess specific facts regarding the criminal activity leading

a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(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.

#### *Facts and Procedural History*

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states that she last entered the United States in November 1990. The petitioner filed the instant Form I-918 petition on December 30, 2008. On September 28, 2009, the director issued a Request for Evidence (RFE), asking the petitioner to submit: a personal statement describing why she ceased to be helpful, or if she disagreed with this characterization, a statement indicating how she had been and/or continued to be helpful to law enforcement, or in the alternative, a newly issued certification from a qualifying law enforcement official showing that she still is being helpful or is likely to be helpful in the investigation/prosecution. The petitioner responded to the RFE with additional evidence, including her personal statement regarding her “withdrawal of demand.” The director found the information in the record insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 petition.

#### *Helpfulness to Law Enforcement*

Upon review of the record, we concur with the director’s decision to deny the petition. While the petitioner’s statement(s) and the Form I-918 Supplement, U Nonimmigrant Verification (Form I-918 Supplement B) show that the petitioner was the victim of a crime of domestic violence, her statement may not be accepted in lieu of the law enforcement certification required by the statute at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). The regulation prescribes that a I-918 petition must be filed with the Form I-918 Supplement B certification. 8 C.F.R. § 214.14(c)(2)(i). That certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying

criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

In this matter, the Form I-918 Supplement B shows that the petitioner was the victim of domestic violence on [REDACTED] in violation of PC 273.5 and that the "suspect struck victim to the head & back" and that a description of documented injury to the victim is "unknown." In Part 4, questions 2 and 3 of the Form I-918 Supplement B, the certifying official checks the box "no" indicating that the petitioner has not been helpful, in the investigation and/or prosecution of the criminal activity and that the petitioner has been requested to provide further assistance in the investigation and/or prosecution. In Part 4, question 4 of the Form I-918 Supplement B, the certifying official checks the box "yes" indicating that the petitioner has unreasonably refused to provide assistance. The certifying official indicates that the victim did not want the suspect prosecuted and the case was closed.

The petitioner attached her personal statement regarding the criminal activity to the Form I-918 Supplement B. According to the petitioner, although she was asked by the domestic violence office whether she wanted to continue with the case, about four months after the initial report of domestic violence on [REDACTED] was filed, she declined to continue with the prosecution as the abuser was standing near her and threatened her. The petitioner further indicates that sometime later in 1992 her claimed abuser left the house.

In his denial letter, the director noted that the certifying official indicated on the Form I-918 Supplement B that the petitioner did not want the suspect prosecuted so the case was closed. Based upon this information, the director concluded that the petitioner had not been helpful in the investigation or prosecution of the qualifying crime and denied the petition accordingly.

On appeal, counsel for the petitioner asserts that the director did not reference the petitioner's second statement in the denial decision. Counsel also asserts that the petitioner was "unable to be helpful" with the prosecution of this case because when she was asked whether she wanted to continue with the case, the aggressor was with her and was making threats.

The statute and regulations require that the petitioner provide a Form I-918 Supplement B indicating that the petitioner was helpful in the investigation and/or prosecution of the criminal activity in which she was involved. While the petitioner credibly explains why she did not assist in the prosecution of her abuser, United States Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the law enforcement certification at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), of the petitioner's helpfulness in the criminal investigation or prosecution. Similarly, USCIS cannot accept other evidence in lieu of the Form I-918 Supplement B certification completed and signed by a certifying official as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). As the

record does not include a certification required by section 214(p)(1) of the Act that indicates the petitioner's helpfulness in the investigation or prosecution of the crime of spousal assault, the petitioner has not overcome the director's denial decision. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and this petition must be denied.

*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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.