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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

b14

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 23 2011

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)

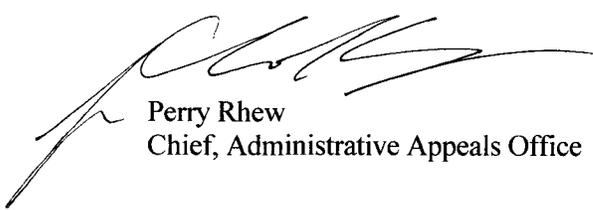
ON BEHALF OF PETITIONER:

SELF-REPRESENTED¹

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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

¹ A Form G-28, Notice of Entry of Appearance as Attorney or Representative, included in the record indicates that [REDACTED] is representing the petitioner. [REDACTED] states that he is an accredited representative of [REDACTED] an organization that is recognized by the Board of Immigration Appeals (BIA). However, a search of the BIA's accredited organizations and representatives at [ashttp://www.justice.gov/eoir/statspub/raroster.htm](http://www.justice.gov/eoir/statspub/raroster.htm) did not reveal the names of [REDACTED] or [REDACTED]. Accordingly, [REDACTED] is not authorized to represent the petitioner pursuant to 8 C.F.R. § 292, and will not be recognized in these proceedings.

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.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: (1) the petitioner did not submit a properly executed law enforcement certification (Form I-918 Supplement B) when initially filing her petition; and (2) she is inadmissible to the United States. On appeal, the petitioner submits a properly executed Form I-918 Supplement B and copies of documents already included in the record.

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 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[.]

In addition, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

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 petitioner is a native and citizen of Mexico, who claims to have entered the United States in December 2002 without inspection. On November 17, 2009, the petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, but she did not include the required law enforcement certification, Form I-918 Supplement B. On June 7, 2010, the director issued a Request for Evidence (RFE) to obtain, in part, a statement from the petitioner concerning her victimization and a Form I-192 waiver application; however, the director did not request the submission of a properly executed Form I-918 Supplement B. The director received the petitioner's response, which included the submission of the requested documents except for the Form I-192 waiver application. The director denied the petition because the petitioner, at the time of filing the Form I-918 U petition, did not include a properly executed Form I-918 Supplement B. The director also noted that the petitioner was inadmissible to the United States and she had not submitted a Form I-192 waiver application. On appeal, the petitioner submits a properly certified Form I-918 Supplement B.

The Petitioner is Statutorily Eligible for U Nonimmigrant Status

The petitioner has submitted a properly executed Form I-918 Supplement B from [REDACTED] [REDACTED] indicated: at Part 3.2 that the criminal activity took place on July 5, 2007; at Part 3.1 that the criminal act perpetrated against the petitioner was domestic violence; and at Part 3.3, that the statutory citation for the crime was New Jersey Criminal Code (N.J.S.A.) § 2C:12-18.² The accompanying police report explained that the petitioner was sleeping when her boyfriend pushed her off of the bed, struck her in the left eye with a closed fist, and then dragged her on the floor by her hair at which time she struck a piece of furniture and injured her arm. The report also indicated that the petitioner's boyfriend continued to strike her after dragging her on the floor, choked her, and refused to let her leave the residence. [REDACTED] [REDACTED] noted on the Form I-918 Supplement B that the petitioner had: visible signs of injury to her nose, chin and eye area; possessed information concerning the criminal activity; had been cooperative in the investigation; and attended all court proceedings.

The petitioner also submitted copies of medical treatment for her injuries, restraining orders issued against her boyfriend and a detailed declaration that described not only the circumstances surrounding the criminal activity listed on the Form I-918 Supplement B, but also her relationship

² Section 2C:12-18 does not exist in the New Jersey Criminal Code. The accompanying police report indicates the crimes as N.J.S.A §§ 2C:12-1b(1) (aggravated assault), and 2C:13-2 (criminal restraint).

with her boyfriend. The petitioner also described another altercation with her boyfriend that occurred after the July 2007 criminal activity, and provided a copy of the accompanying police report. Based on the evidence in the record, the petitioner has established her eligibility for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act, as a victim of qualifying criminal activity.

The Petitioner's Admissibility to the United States

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, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility.

The director's June 7, 2010 RFE was issued to notify the petitioner, in part, that she was required to submit a Form I-192 waiver application because she was inadmissible under section 212(a)(6)(A)(i) of the Act (present in the United States without admission or parole). Although the petitioner's response did not contain a Form I-192 waiver application, because she is statutorily eligible for U nonimmigrant status, we will return the matter to the director so that he may issue an RFE to the petitioner and provide her with an opportunity to properly file an original Form I-192 waiver application with supporting documents and fee, or to request a fee waiver.

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 been met as to the petitioner's statutory eligibility for U nonimmigrant status.

ORDER: The director's decision is withdrawn and the matter returned for issuance of an RFE to the petitioner requesting the filing of an original Form I-192 waiver application. After the petitioner has responded to the RFE or the time period for a response has elapsed, the director shall issue a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the AAO for review.