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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

PUBLIC COPY

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JAN 11 2011

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:

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:

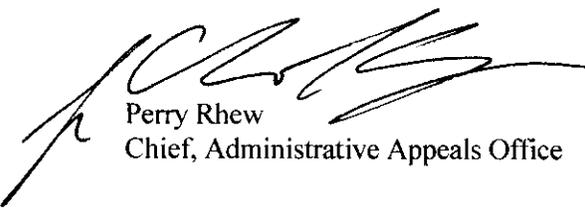
SELF-REPRESENTED

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 submit a properly executed law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification), or establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, the petitioner submits a brief statement and a signed and dated law enforcement certification (Form I-918 Supplement B).

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[.]

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).

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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Senegal who states that she last entered the United States in November 2001. The petitioner filed the instant Form I-918 U petition on July 13, 2009, and included a police report, dated February 9, 2009, regarding a domestic violence situation between her and her estranged husband, as well as a letter from the Victim Advocate Manager, North Charleston, South Carolina Police Department, that was addressed to the petitioner. On January 15, 2010, the director issued a Request for Evidence (RFE) to obtain, in part, a properly executed law enforcement certification (Form I-918 Supplement B) from a certifying agency. In response, the petitioner submitted a second copy of the letter from the Victim Advocate Manager, but she did not include a properly executed Form I-918 Supplement B. Accordingly, the director denied the Form I-918 U petition, and the petitioner has timely appealed.

Law Enforcement Certification (Form I-918 Supplement B)

On appeal, the petitioner submits a Form I-918 Supplement B, signed by [REDACTED] of the North Charleston, South Carolina Police Department. At Part 3.1, [REDACTED] indicates the criminal act as domestic violence. At Part 3.2, the date of the criminal activity is listed as February 9, 2009, and at Part 3.2, the crime is listed as "criminal domestic violence." [REDACTED] does not provide a statutory citation for the crime, but describes the criminal activity at Part 3.5 as follows:

Victim called police and had them respond to an assault that was committed by the victim's husband. The suspect fled the scene. The Victim Advocate called and sent a letter to the victim, but she never responded for a follow-up. It is not until 4-8-10 which is 14 months later that victim contacts the Victim Advocate. That was only to do this visa application.

At Part 4 of the Form I-918 Supplement B, which discusses whether the petitioner has been helpful to law enforcement authorities, [REDACTED] indicated at Part 4.2 that the petitioner had not been helpful. She did not check any of the boxes at Parts 4.3 and 4.4 regarding whether the petitioner had been requested to provide further assistance or whether is unreasonably refused to provide assistance. At Part 4.5, [REDACTED] stated: "The victim has not contacted the victim advocate or a detective about her case. The victim did fax a letter that the victim advocate had sent her in Feb 2009 which shows that she knows we have attempted to follow up with her." Regarding any known injuries at Part 3.6, [REDACTED] stated: "There is no known injury to the victim. The victim was asked if she required EMS and she declined according to the police report."¹

As stated earlier, the director denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B and she, therefore, could not establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. Although the petitioner has submitted a properly executed Form I-918 Supplement B on appeal, the submission of this document does not overcome all of the director's stated reasons for denying the petition. In particular, the Form I-918 Supplement B does not establish that the petitioner 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).

[REDACTED] indicated at Part 4.1 of the Form I-918 Supplement B and in her narrative at Parts 3.5 and 4.5 that the petitioner had not been, was not being, and was not likely to be helpful in the investigation of the domestic violence situation between the petitioner and her husband in February 2009. Without evidence from the certifying agency that establishes the petitioner's helpfulness to law enforcement authorities in the investigation or prosecution of a qualifying crime or criminal activity, the petitioner cannot establish that she was helpful to law enforcement authorities as required by section 101(a)(15)(U)(i)(III) of the Act. She, therefore, cannot establish her eligibility for U nonimmigrant status as the victim of a qualifying crime or criminal activity.

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.

¹ The police report that the petitioner submitted with the Form I-919 U petition, indicates that the petitioner called the police after her estranged husband struck her in the face with his closed fist, pulled her right earring out of her ear, and pulled out her hair extensions.