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

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U.S. Citizenship
and Immigration
Services

B14

FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 11 2011

IN RE:

Petitioner:

PETITION:

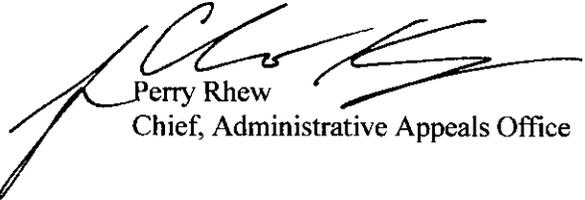
Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.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, U Nonimmigrant Status Certification) when initially filing her petition; and (2) she is inadmissible to the United States. On appeal, counsel submits a timeline of the events relating to the filing of documents in this matter along with supporting evidence, as well as 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 Honduras, who was apprehended by officers of U.S. Customs and Border Protection in January 2006. The petitioner was placed into proceedings before an immigration judge, who ordered her removed from the United States on March 7, 2006. On December 7, 2009, the petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, but she did not attach a Form I-918 Supplement B, U Nonimmigrant Status Certification. On March 11, 2010, the director issued a Request for Evidence (RFE) to obtain, in part, a properly executed Form I-918 Supplement B and a Form I-192 waiver application. The director provided the petitioner with a response date of June 6, 2010. The director received the petitioner's response on June 7, 2010, which included a properly certified Form I-918 Supplement B. The director denied the petition on July 16, 2010 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 that she had not submitted a Form I-192 waiver application in her June 7, 2010 response. On appeal, counsel submits a timeline of the filing of the RFE response along with supporting evidence, some of which is already included in the record.

The Petitioner's RFE Response

The petitioner's response to the director's RFE was due on June 6, 2010, which fell on a Sunday. The regulation at 8 C.F.R. § 1.1(h) provides that:

[W]hen computing the period of time for taking any action provided in this chapter . . . when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

As June 6, 2010 fell on a Sunday, the petitioner had until June 7, 2010 to submit her RFE response, which she did, and her response included a properly executed Form I-918 Supplement B. Accordingly, we withdraw the director's finding that the Form I-918 U petition must be denied because the petitioner failed to submit a properly executed Form I-918 Supplement B when she initially filed her petition for U nonimmigrant status.

The Petitioner's Statutory Eligibility for U Nonimmigrant Status

The petitioner has submitted a properly executed Form I-918 Supplement B from [REDACTED] [REDACTED] indicates at Part 3.1 that the criminal acts perpetrated against the petitioner were "abusive sexual contact," "prostitution," and "solicitation to commit any of the named crimes." At Part 3.3, [REDACTED] lists the statutory citation for the crimes as California Penal Code sections: 243.4(a) (misdemeanor sexual battery); 314 (lewd or obscene conduct); and 647 (disorderly conduct). In a statement attached to the Form I-918 Supplement B, [REDACTED] explains, in part, that the petitioner made a sexual harassment complaint against her employer, [REDACTED] of the Pacific, and that she had been and continued to be helpful in the investigation.¹ [REDACTED] also stated that the petitioner suffered severe emotional distress as a result of the sexual harassment, which manifested in insomnia, nightmares and anxiety. The petitioner also submitted a declaration regarding her experiences working at [REDACTED] of the Pacific. 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 March 11, 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). When denying the Form I-918 U petition, the director noted that the petitioner's RFE response did not include the Form I-192 waiver application. On appeal, counsel provides a copy of a Form I-192 waiver application that was signed by the petitioner on December 30, 2009.

The record does not contain the original Form I-192 waiver application of which counsel has submitted a copy. A search of U.S. Citizenship and Immigration Services (USCIS) electronic records also does not indicate that the petitioner filed a Form I-192 waiver application with the required fee, or that she requested a fee waiver. Nevertheless, because the petitioner 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

¹ In an April 25, 2010 *Determination*, the EEOC found that there was reasonable cause to believe that the petitioner was discriminated against based on her sex when she was subjected to sexual harassment and a hostile work environment by one of her managers.

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.