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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

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Date: **JUL 27 2011**

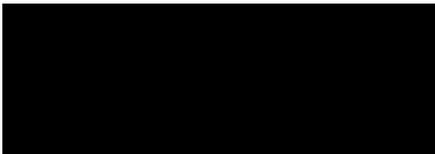
Office: VERMONT SERVICE CENTER

FILE: 

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:

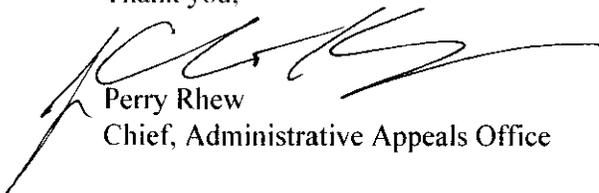


INSTRUCTIONS:

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 \$630. 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 Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The previous decision to dismiss the appeal will be affirmed and the petition will remain denied.

*Applicable Law*

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), which provides that an individual may qualify for U nonimmigrant classification as a victim of a qualifying crime 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*

As the AAO's prior decision adequately addressed the pertinent facts and procedural history, we shall repeat only certain facts as necessary here. The petitioner is a 36-year-old native and citizen of Mexico who claims that after her arrival in the United States, she was subjected to substantial physical and mental abuse by her former boyfriend. 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 crime. The petitioner, who was in the home at the time of the murder, was interviewed by the authorities, and she provided a witness statement. The petitioner stated 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.

In or around June, 2001, the petitioner reentered the United States. 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.<sup>1</sup> The petitioner stated 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. The petitioner stated that she was now prepared to provide additional information about her former boyfriend to the authorities.

In 2005, the petitioner was placed in removal proceedings, 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 law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification) 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 initially denied the petition because the petitioner did not submit a properly completed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) and consequently did not meet any of the eligibility requirements at subsections 101(a)(15)(U)(i)(I)-(IV) of the Act. On appeal, the AAO concurred with the director's decision, finding that although the petitioner claimed that she was the direct victim of the crimes of domestic violence, rape, witness tampering, felonious assault, and obstruction of justice, she failed to provide a Form I-918 Supplement

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<sup>1</sup>*USA v. Macias, Gabino*, No. [REDACTED] (D. Idaho Aug. 1, 2001) (Application for Arrest Warrant of Material Witness).

B certifying that she was 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). The AAO noted further that although the record showed that the petitioner had assisted law enforcement in the investigation and prosecution of a drug-related homicide, as a witness to the murder of an unrelated individual, she did 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).

The AAO also determined that U.S. Citizenship and Immigration Services (USCIS) lacked the authority to waive the statutorily required law enforcement certification and even if the statements of the Drug Enforcement Administration (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.

On motion, the petitioner through counsel states that the AAO impermissibly dismissed the possibility that the petitioner may qualify as an indirect victim of the drug-related homicide, citing the preamble to the U nonimmigrant visa rule (72 Fed. Reg. 179, 53014 - 42, 53025 (Sept. 17, 2007)), which discusses bystanders to a crime qualifying as victims. Counsel maintains that the statute clearly contains no requirement that a petitioner suffer the same offense that he or she is assisting law enforcement to investigate or prosecute. Counsel again asserts that requiring the petitioner to submit a Form I-918 Supplement B is *ultra vires* to the statute, and that although section 214(p) of the Act discusses the need for a law enforcement certification, it did not specify the format that such certification must take. Counsel states that permitting a petitioner to submit documentation from law enforcement authorities that establishes her helpfulness to an investigation or prosecution of a crime is consistent with the purpose of the U nonimmigrant classification. Finally, counsel contends that the AAO did not provide a meaningful analysis on whether the petitioner suffered substantial physical or mental abuse.

### *Analysis*

In our prior decision, we acknowledged that the petitioner had provided assistance to officials in the investigation and prosecution of a drug-related homicide. We, however, determined that the petitioner's eligibility for U nonimmigrant status had not been established because the petitioner failed to submit the law enforcement certification required by section 214(p) of the Act, as explicated at 8 C.F.R. § 214.14(c)(1). Counsel's arguments on motion do not overcome our prior determination that a Form I-918 Supplement B is the required format for the certification. As we noted in our prior decision, we have no authority to deem the regulatory requirement to file a law enforcement certification in the format specified at 8 C.F.R. § 214.14(c)(1) *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).

As noted in our prior decision, the statements of the DEA agent and the Assistant U.S. Attorney also fail to certify that the petitioner was the victim of the homicide or any other qualifying crime. Regarding counsel's contentions that we impermissibly dismissed the possibility that the petitioner may qualify as an indirect victim, we note that counsel has presented no analysis of how the AAO erred in its conclusion. According to her February 25, 2008 affidavit, the petitioner did not witness the shooting and was not a bystander to the crime; she was hiding in her closet and only became aware that a murder had taken place after she went outside and police handcuffed her. Thus, the example that counsel points to in the preamble to the U nonimmigrant visa rule regarding bystanders as victims does not apply to the petitioner. As stated in our prior decision, the record contains no evidence that a law enforcement authority has certified the petitioner as a victim of any of the crimes she has claimed, which include domestic violence, rape, witness tampering, felonious assault, and obstruction of justice.

Regarding counsel's assertions as to our negligence for not providing a meaningful analysis of the petitioner's substantial physical or mental abuse claim, we note that because the petitioner has not established that she is the victim of a qualifying crime, she cannot establish that she suffered substantial physical or mental abuse as the victim of qualifying criminal activity, or meet the other eligibility criteria at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Accordingly, our decision to not analyze the petitioner's abuse claim was not prejudicial.

### *Conclusion*

The petitioner has not submitted the law enforcement certification required at section 214(p) of the Act and as explicated at 8 C.F.R. § 214.14(c)(1). 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.

**ORDER:** The AAO's prior decision, dated November 18, 2010, is affirmed. The appeal remains dismissed and the petition remains denied.