

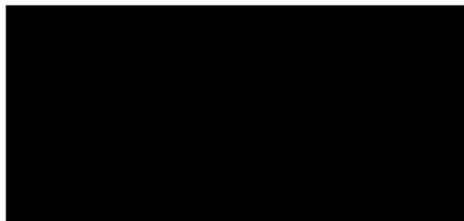
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



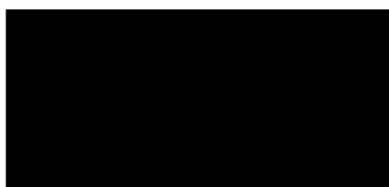
D14

Date: **JUN 03 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 Petition for U Nonimmigrant Status (Form I-918 U 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 failed to submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B) and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. In addition, the director denied the petition because the petitioner was inadmissible and his request for a waiver of inadmissibility was denied. On appeal, counsel submits a brief and copies of documents previously filed.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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 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:

(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.

....

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien . . . parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

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).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico. On July 5, 1991, the petitioner entered the United States without inspection.

On November 9, 2009, the petitioner filed the instant Form I-918 U petition. On March 15, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On July 9, 2010, the director issued a Notice of Intent to Deny (NOID). On October 14, 2010, after considering the evidence of record, including counsel's response to the RFE and NOID, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the petitioner is eligible based on his cooperation with the police and State prosecutors office in regard to his minor U.S. citizen daughter who was the victim of a qualifying crime and suffered substantial harm as a result of that crime.

The Criminal Activity

The petitioner's spouse claimed in her October 30, 2009 sworn statement that her child was the victim of child abuse and cruelty committed by R-B-¹ a person who owned and worked as a caregiver at a daycare center which her child attended from 2006 until 2008. She stated that she received a call from R-B- informing her that her child had been bitten by a spider and that R-B- had administered Motrin and Benadryl to the child. She stated that she immediately went to collect the

¹ Name withheld to protect individual's identity.

child, at which time R-B- appeared to be nervous and informed her that the child might have been bitten because she had been sleeping near a window. She stated that she informed R-B- that the child had swollen eyes, her mouth was broken and nose were bleeding and that these injuries could not have resulted from a spider bite. She stated that she took the child to a clinic whose doctors referred her to a nearby hospital at which the doctors informed her that the child had been severely hit and the bruises and lesions were not caused by a spider. She stated that R-B- was successfully criminally charged and convicted.

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Assistant Florida State Attorney Hamid Hunter (certifying official) of the 20th Judicial Circuit. At Parts 1 and 3.1, the certifying official identified the petitioner's child, J-T-² as the victim of child abuse. At Part 3.3, the certifying official cited child abuse under section 827.03 of the Florida Statutes Annotated (FSA) as the criminal activity investigated or prosecuted.

At Parts 3.5 and 3.6, the certifying official did not describe the criminal activity being investigated or prosecuted or any known or documented injury to the petitioner's child, but at parts 3.5 and 3.6 he referred to an "attached redacted police report." At Part 4.5, the certifying official indicated that the victim was a child and her parents made her available to the police for an investigation and actively participated in the case. The attached police report indicates that the petitioner's child had been struck and shaken in a vigorous manner by R-B-, resulting in visible injuries to her face and head, which were documented by medical personnel. The police report further stated that, based on the evidence in the record, the police were investigating charges of child abuse, cruelty to child without great harm, under FSA § 827.03.1; child neglect without great harm under section FSA § 827.03.3c and misdemeanor battery under FSA § 784.03.1a2.

Court documents attached to the Form I-918, Supplement B indicate that R-B- was charged with a violation of FSA § 827.03(1)(b), that R-B- pled *nolo contendere* to the charge and that he was sentenced to four years probation, fines, court costs, no contact with the victim, mental health assessment, DNA testing and restitution.

Medical documents in the record indicate that the petitioner's child was treated for child abuse, contusions and released from the hospital.

In response to the director's RFE, the petitioner submitted a sworn statement, dated March 26, 2010, in which he stated that his spouse received a call from R-B- informing her that his daughter had been bitten by a spider or stung by a bee. He stated that his spouse informed him that she was on the way to the hospital and that his daughters face was very red and swollen, she had red spots around her eyes and dried blood in her nose and two lumps on her head. He stated that he immediately drove to the hospital. He stated that the doctor and the police confirmed that his daughter had suffered from abuse and that R-B- had struck the child multiple times and physically shook her. He stated that his daughter was visibly upset and in pain. He stated that R-B- confessed that she had repeatedly struck his daughter and that she shook her hard because she would not stop crying.

² Name withheld to protect individual's identity.

In response to the director's NOID, the petitioner also submitted an affidavit, dated August 9, 2010, in which he reiterated what had occurred in regard to the abuse his daughter experienced while under the care of R-B-. He stated that, with his and his spouse's cooperation, the police were able to arrest R-B-.

As noted previously, the director found that the petitioner was not a victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act because he was not named as the victim on the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B). In both the RFE and NOID, the director requested the petitioner to submit, among other things, a properly completed Supplement B identifying the petitioner as the victim. Although the petitioner responded to both the RFE and NOID, he did not submit a new Supplement B.

On appeal, counsel contends that the petitioner is applying as an indirect victim, principal petitioner, because the victim was two years old and is incompetent or incapacitated, and, therefore, unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity.

The Form I-918, Supplement B

The statute and regulations require a law enforcement certification to verify the petitioner's victimization and eligibility under subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2)(i). The regulations do not, however, delegate any authority to determine the petitioner's eligibility for U nonimmigrant classification to the certifying agency; that authority rests with U.S. Citizenship and Immigration Services (USCIS). Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). USCIS also determines "in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, 'U Nonimmigrant Status Certification.'" 8 C.F.R. § 214.14(c)(4). The law enforcement certification must include a statement that the petitioner "has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i).

In this case, the director based his denial on the finding that the Form I-918 Supplement B was insufficient because it did not name the petitioner as the victim in Part 1. On appeal, counsel claims that this fact is not disqualifying because the petitioner is the indirect victim of a criminal activity perpetrated against his minor daughter who was only two years old at the time of the crime. Although the regulatory definition of a victim includes parents of a direct victim under 21 who is incompetent or incapacitated, such parents must still be identified on the law enforcement certification as victims. *See* 8 C.F.R. § 214.14(a)(14)(i), (c)(2)(i). In this case, the Form I-918 Supplement B identifies the petitioner's daughter as the victim in Part 1 and references the attached police report in Part 5 regarding the criminal activity investigated or prosecuted and the victim's involvement. The attached police report identifies the petitioner's wife and discusses her involvement, but the report does not identify the petitioner or reference his involvement in the detection, investigation or prosecution of the offense committed against his daughter. Part 4 of the Form I-918 Supplement B regarding the helpfulness of the victim states, "Victim is a child, her parent made her available to the police for an investigation and actively participated in the case.

The case was successfully prosecuted.” However, the petitioner is again not identified and it is unclear whether the comment refers to the petitioner or his wife.

We recognize the difficulties that a petitioner may face in obtaining a properly certified Form I-918 Supplement B under the circumstances in which the petitioner is an indirect victim of the criminal activity. However, the statute and regulation require that the Form I-918 Supplement B identify the petitioner as a victim of the qualifying criminal activity and attest to the petitioner’s helpfulness in the certifying agency’s investigation or prosecution of such activity. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2)(i). The law enforcement certification submitted by the petitioner in this case does not meet these requirements.

Qualifying Criminal Activity

To qualify for U nonimmigrant classification, a petitioner must show that the offense involved in his or her case is qualifying criminal activity. Section 101(a)(15)(U)(i), (iii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), (iii). The statute lists specific qualifying crimes, but also encompasses “any similar activity” to the enumerated crimes and the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” Section 101(a)(15)(U)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(iii). 8 C.F.R. § 214.14(a)(9). Counsel has not demonstrated that the offenses in this case are qualifying criminal activity.

The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner’s child was the victim of child abuse under FSA § 827.03. The certifying official also provided clarifying evidence in the police reports, charging documents and a notification of conviction accompanying the Form I-918 Supplement B. These documents establish that the certifying agency investigated charges of child abuse, cruelty to child without great harm, under FSA § 827.03.1; child neglect without great harm under FSA § 827.03.3c and first degree misdemeanor battery under FSA § 784.03.1a2. However, none of these offenses are among the statutorily enumerated crimes at section 101(a)(15)(U)(iii) of the Act and counsel presents no analysis of how the elements and nature of any of these offenses are substantially similar to any of the statutorily enumerated crimes such that the offenses would constitute qualifying criminal activity.

Remaining Eligibility Criteria

The relevant evidence establishes R-B-’s abuse of the petitioner’s child and her resultant injuries. That evidence does not, however, demonstrate that the criminal offenses involved in this case constitute qualifying criminal activity. Qualifying criminal activity is a threshold requirement for all the U nonimmigrant eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. See 8 C.F.R. § 214.14(b), (c)(2). Because the petitioner has not demonstrated that the offense(s) of which he was the indirect victim constitute qualifying criminal activity, he cannot meet any of the eligibility criteria for U nonimmigrant classification.

In addition, U nonimmigrants must be admissible to the United States or have any ground of inadmissibility waived. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14); 8 C.F.R.

§§ 212.17, 214.14(c)(2)(iv). In this case, the director determined that the petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act for being present in the United States without admission or parole. The director denied the petitioner's waiver request (Form I-192, Application for Advance Permission to Enter as a Nonimmigrant) because the instant Form I-918 U petition had been denied. While we have jurisdiction to review the director's admissibility determination, we lack jurisdiction to adjudicate a Form I-192 or to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). Here, the record shows that the petitioner entered the United States without inspection in July 1991 and has never been admitted or paroled. Accordingly, he remains inadmissible to the United States under section 212(a)(6)(A)(i) of the Act and is ineligible for U nonimmigrant classification for this additional reason.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). The petitioner has failed to meet his burden and the appeal will be dismissed. The petition will remain denied.

ORDER: The appeal is dismissed.