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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**



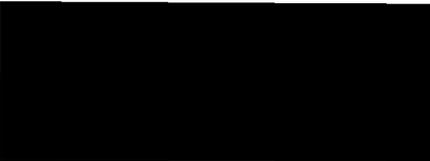
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Date: JUN 07 2011 Office: VERMONT SERVICE CENTER FILE:

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 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 Petition for U Nonimmigrant Status (Form I-918) 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that she was helpful, is helpful, or is likely to be helpful in the investigation or prosecution of qualifying criminal activity because she unreasonably refused to provide ongoing assistance to a criminal investigation past the initial onset of the investigation. On appeal, counsel contends that the circumstances of the case and the petitioner's continuous physical abuse from her husband are the reasons why she relocated to New Mexico; the police officer failed to provide a proper and professional translator in order to better explain to the petitioner the circumstances and procedure of the crime which her husband had committed; the petitioner is an uneducated abused woman who is not familiar with U.S. laws and has experienced a government and law enforcement system in Mexico which rarely truly helps and protects victims; and had the police officer been better trained the petitioner would have been more involved in the investigation and prosecution of her husband's crimes. Counsel also submits a declaration from the petitioner's sister, an affidavit from prior counsel, criminal records for the petitioner's husband and copies of documentation already in the record in support of the appeal.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act 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). Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

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 reflects that the petitioner is a native and citizen of Mexico who first entered the United States without inspection in December 1998. On April 28, 2008, the petitioner filed the Form I-918. On February 9, 2010, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit evidence in support of her claim that she possessed information about qualifying criminal activity and had been helpful in its investigation or prosecution. The director specifically requested an explanation from the certifying official on the U Nonimmigrant Status Certification (Form I-918 Supplement B, or law enforcement certification). The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s helpfulness to the certifying agency. Accordingly, the director denied the petition and the petitioner’s Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner filed a timely appeal of the denial

of the Form I-918.

Analysis

The regulation prescribes that a Form I-918 U petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

The Form I-918 Supplement B submitted by the petitioner was signed by [REDACTED] of the [REDACTED] Department. In completing Part 4 of the Form I-918 Supplement B he indicated that the petitioner had not been, was not being or was not likely to be helpful in the investigation and/or prosecution of the criminal activity and also indicated that the petitioner was requested to provide further assistance in the investigation and/or prosecution.

We acknowledge the fear that the petitioner faced when deciding whether to provide assistance to the police with an investigation or prosecution of her husband with whom she was still living and/or attempting to flee. Nevertheless, the regulations require the petitioner to show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3); *Supplementary Information*, 72 Fed. Reg. at 53019 (“excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested”). The regulation provides an exception to the helpfulness requirement only for victims under the age of 16 or victims unable to assist in the investigation or prosecution because they are incapacitated or incompetent. 8 C.F.R. § 214.14(b)(3). U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. As the petitioner has failed to submit a certification meeting all of the requirements set forth in 8 C.F.R. § 214.14, as required in section 214(p)(1) of the Act, she cannot establish her helpfulness to law enforcement in the investigation or prosecution of qualifying criminal activity, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that



Page 5

burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.