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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



D14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 02 2011

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)

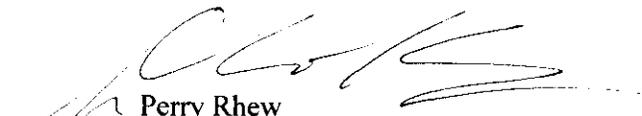
ON BEHALF OF PETITIONER:
[REDACTED]

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)(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 in the investigation or prosecution of qualifying criminal activity because she unreasonably refused to provide assistance to a criminal investigation. On appeal, counsel states that the petitioner wanted to, but could not be, helpful to the police because she was intimidated by her husband, the perpetrator of the criminal activity. The petitioner also submits a declaration in support of her 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 in or around 1995. On October 26, 2005, the petitioner applied for Suspension of Deportation or Special Rule Cancellation of Removal pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). On January 6, 2006, U.S. Citizenship and Immigration Services (USCIS) did not grant the petitioner’s NACARA application and referred it to the Los Angeles Immigration Court. The petitioner’s next hearing date is scheduled for May 9, 2011.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U Petition) on October 27, 2009. On February 26, 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 petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s helpfulness to the certifying agency. The director denied the petition on this ground, and the petitioner filed a timely appeal.

The Petitioner has not Established her Helpfulness to Law Enforcement Authorities

The petitioner stated in her October 2009 declaration that she met her husband in 1995 and that he

began abusing her shortly after they moved in together when she was pregnant with their first daughter. The petitioner recounted several incidents when she called the police after being beaten by her husband. The petitioner indicated that she did not cooperate with the investigation or prosecution of a crime against her husband because he threatened to harm her and their daughters, and beat her on at least one occasion, for working with law enforcement authorities to prosecute him.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted was signed by [REDACTED] of the Los Angeles County Police Department. When describing the petitioner's helpfulness to law enforcement authorities, [REDACTED] indicated that the petitioner had unreasonably refused to provide assistance, and noted that she "repeatedly refused to cooperate in investigations." In an attached statement, [REDACTED] explained that the petitioner had reported three incidents of domestic violence against her by her husband and had refused to prosecute the first two offenses. When a hearing was scheduled regarding the third incident in March 2005, [REDACTED] noted that the petitioner requested a postponement of the hearing for which a new hearing date was scheduled, but the petitioner told the authorities that she could not appear. [REDACTED] recounted that when a third hearing date was set, both the petitioner and her spouse failed to appear. Detective [REDACTED] noted: "all the above cases are closed and will not be reopened." (Emphasis in original).

When denying the petition, the director acknowledged the petitioner's claims of being intimidated by her husband into not cooperating with the prosecution of any crimes against him, but noted that section 101(a)(15)(U)(i) of the Act required evidence of the petitioner's helpfulness to law enforcement authorities in order to establish eligibility for U nonimmigrant status.

On appeal, counsel notes that the petitioner reported the crimes against her by her husband to the police and received several restraining orders against him. Counsel contends that the petitioner wanted to be helpful to law enforcement authorities but was intimidated by her husband into not providing assistance to the police for his prosecution. Counsel maintains that the petitioner did not willfully refuse to cooperate and should not be denied U nonimmigrant status relief because of her husband's threats against her.

In her declaration submitted on appeal, the petitioner reiterates that her husband beat and threatened her not to testify against him on two occasions in 2003 and 2005. She states that she "felt paralyzed" by fear for herself and her daughters and she explains that she "thought by reporting it to the police as many times as [she] did, that the police would be able to prosecute him if [she] was unable to testify."

We acknowledge the fear, abuse and emotional turmoil 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. 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)

Here, the petitioner called the police on several occasions either during or after incidents of abuse by her husband. The certifying agency requested assistance in order to investigate and prosecute three incidents of abuse that occurred in 2003 and 2005, but the petitioner refused to cooperate, as noted by [REDACTED] on both the Form I-918 Supplement B and in an accompanying statement. The record contains no indication that the certifying agency's requests were unreasonable. While counsel asserts that the petitioner's failure to assist was not willful, the relevant evidence does not demonstrate that the petitioner was incapacitated or incompetent at the time the police department requested her assistance. Accordingly, the petitioner's refusal to assist with the certifying agency's reasonable efforts to investigate or prosecute the qualifying criminal activity precludes satisfaction of the regulatory requirement. Consequently, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

Although the petitioner suffered substantial abuse as the victim of a qualifying crime, she did not provide continuing assistance to the certifying agency when reasonably requested, as required by 8 C.F.R. § 214.14(b)(3). Accordingly, the petitioner is ineligible for U nonimmigrant classification.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.