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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: **APR 20 2012** 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 (“the director”), 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 petition will remain denied.

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.

Applicable Law

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

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 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, 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.*

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) 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.

In addition, like all other nonimmigrants, petitioners for U classification must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

The petitioner is a native and citizen of the United Kingdom who claims to have last entered the United States in January 2005 without being inspected, admitted or paroled by an immigration officer. On September 29, 2009, the petitioner filed a Form I-918 U petition with an accompanying *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) to obtain, in part, an explanation by the certifying official regarding the petitioner's helpfulness to the investigation or prosecution of the criminal activity. In response, the petitioner through counsel submitted a statement regarding the criminal activity and the petitioner's assistance to police. The director denied the petition due to the certifying official's indication on the Form I-918 Supplement B that the petitioner was not helpful to the investigation or prosecution of the criminal activity and because the petitioner is inadmissible to the United States and her request for a waiver of inadmissibility was denied. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

The petitioner's Form I-918 Supplement B, dated August 31, 2009, was signed by an Assistant State Attorney, Office of the State Attorney, 17th District, in Ft. Lauderdale, Florida (certifying official). The certifying official listed the criminal activity as battery in Part 3.1, indicating at Part 3.3 that the criminal activity violated section 784.045(1)(b) of the Florida Statutes (aggravated battery). At Parts 3.5 and 3.6 concerning a description of the criminal activity and any known or documented injuries to the petitioner, the certifying official stated that the petitioner, who was pregnant at the time, was struck in the face by the perpetrator during an argument, and that the petitioner had a swollen left cheek as a result.

The certifying official indicated at Part 4 that the petitioner did not possess information about the criminal activity described at Part 3, was not helpful in the investigation or prosecution of the criminal activity, and had unreasonably refused to provide assistance. The certifying official wrote:

On 7/5/2006 – Spoke with victim, who does not have an[y] input. Does not want to be present at plea. No restitution. Does not want to provide input or care about sentence. Wants to put incident behind her (notes by ASA Morris)

On 12/6/2006 – victim failed to appear at deposition phone # in file no longer in service/not good

2/5/2007 – case plea; victim not present at court hearing

In his denial decision, the director noted that the petitioner had a responsibility to provide ongoing cooperation with law enforcement authorities in their investigation or prosecution of qualifying criminal activity, and that although it appeared she had initially been cooperative, the evidence in the record failed to demonstrate the petitioner's continuing assistance to law enforcement authorities. On appeal, counsel states that the police report that was submitted along with the Form I-918 Supplement B indicated that the petitioner possessed information about the criminal activity, was helpful to the police (otherwise an arrest would have never taken place), and that no further assistance from the petitioner was required since the perpetrator was convicted of the battery offense. Counsel states further that the evidence does not indicate that the petitioner refused to cooperate with law enforcement authorities and even if she did, such refusal was reasonable. Regarding the petitioner's inadmissibility, counsel states that because there was no discussion of the merits of her waiver application in the director's denial of the same, the only issue to be addressed on appeal relates to the question of the petitioner's helpfulness to law enforcement authorities in the investigation or prosecution of the criminal activity.

The regulation at 8 C.F.R. § 214.14(b)(4) governs the evidentiary standards and burden of proof for I-918 U petition filings and, in part, provides U.S. Citizenship and Immigration Services (USCIS) with the discretion to determine the evidentiary value of submitted evidence, including a Form I-918 Supplement B. This regulation, however, does not provide USCIS with the authority to accept other evidence, such as a police report, in place of the law enforcement certification described at section 214(p)(1) of the Act. Here, the Form I-918 Supplement B that the petitioner submitted is not one described at section 214(p)(1) of the Act because the certifying official indicated that the petitioner was

not helpful to the investigation or prosecution of the criminal activity that she reported. As stated earlier, the regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance 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 certifying official indicated at Part 4.2 that the petitioner had not been, was not being, or was not likely to be helpful to law enforcement authorities in the investigation or prosecution of the criminal activity, and that she had unreasonably refused to provide assistance in the investigation or prosecution. The record contains no indication that the certifying agency’s requests were unreasonable. The petitioner’s claim that she was incapacitated when requested to appear at the deposition due to the unexpected delivery of her child is not supported by the evidence in the record. The certifying official noted the petitioner’s failure to appear at the deposition on December 6, 2006, more than 20 days prior to the birth of her child on December 29, 2006. 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).

The director also denied the petition because the petitioner is inadmissible to the United States under: section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without being admitted; section 212(a)(6)(C)(i) of the Act, as an alien who by fraud or willfully misrepresenting a material fact seeks to procure or has sought to procure a visa, other documentation, or admission into the United States; section 212(a)(6)(C)(ii) of the Act, as an alien who made a false claim to U.S. citizenship; section 212(a)(9)(B)(i)(II) of the Act, as an alien unlawfully present; and section 212(a)(9)(C)(i)(II) of the Act as an alien who was previously ordered removed and who has reentered the United States without being inspected, admitted or paroled by an immigration officer.

The record shows that the petitioner was ordered removed from the United States by an immigration judge in December 2002 and was removed on January 27, 2003. The petitioner stated on her Form I-918 U petition that she reentered the United States in January 2005 without being inspected, admitted or paroled by an immigration officer. She is, therefore, inadmissible to the United States under sections 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(II) of the Act, as noted by the director. In addition, the petitioner is inadmissible under section 212(a)(9)(C)(i)(I) of the Act because she was ordered removed from the United States and reentered without being inspected, admitted or paroled by an immigration officer, and thereafter accrued more than one year of unlawful presence in the United States.¹

The record additionally shows that in November 2002 the petitioner was convicted of making a false statement in a U.S. passport application and that she was sentenced to six weeks of imprisonment with

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

credit for time served.² We find no error in the director's determination that the petitioner's criminal conviction renders her inadmissible under sections 212(a)(6)(C)(i) and (ii) of the Act for seeking to procure a U.S. passport by misrepresenting herself as a citizen of the United States on a passport application.

Counsel states that the only issue on appeal is the petitioner's helpfulness to law enforcement authorities because the director failed to assess the merits of the petitioner's waiver application in the denial of the same. As noted earlier on our decision, the regulation at 8 C.F.R. § 214.1(a)(3)(i) requires a U nonimmigrant to be admissible to the United States or have any inadmissibility grounds waived. The AAO has no jurisdiction to review the denial of a Form I-192 waiver application. *See* 8 C.F.R. § 212.17(b)(3) (No appeal lies from the denial of a waiver request.). However, we do have jurisdiction to determine whether a U nonimmigrant petitioner is inadmissible and therefore required to file a Form I-912 waiver application. Neither counsel nor the petitioner has contested the petitioner's inadmissibility on the grounds noted by the director, and we find no error in the inadmissibility grounds cited by the director in his denial decision. Accordingly, the petitioner remains ineligible for U nonimmigrant classification because she is inadmissible to the United States and her request for a waiver of her inadmissibility was denied.

Conclusion

The petitioner failed to submit the certification required by section 214(p)(1) of the Act. The petitioner is also inadmissible to the United States and her request for a waiver of inadmissibility was denied. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed. 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 appeal is dismissed. The petition remains denied.

²Judgment and Sentence, *United States v. Constance Lawrence*, No. 02-CR-60219 (S.D. Fl. Nov. 25, 2002).