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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

[Redacted]

Date: **APR 09 2012** Office: VERMONT SERVICE CENTER FILE [Redacted]

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 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 on the basis that the petitioner had failed to submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B). On appeal, the accredited representative submits a Notice of Appeal (Form I-290B) reasserting the petitioner's eligibility.

*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. In February 1989 the petitioner entered the United States without admission or parole. On May 27, 2010, the petitioner filed the instant Form I-918 U petition. On November 12, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through her accredited representative, submitted a timely response. On March 23, 2011, after considering the evidence of record, including the representative's response to the RFE, 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, the representative asserts that the petitioner is eligible based on her cooperation with law enforcement in regard to her 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, in her February 1, 2011 statement, claimed that her child was the victim of sexual abuse committed by J-C-J-<sup>1</sup> her ex-boyfriend. She stated that the abuse occurred while she was absent from the household and that she did not know about the abuse until February 19, 2010. She stated that J-C-J- has been incarcerated for almost one year. The petitioner reiterated her claim in an undated letter submitted on appeal.

The initial Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was completed by Sheriff's Detective [REDACTED] of the San Bernardino County, California Sheriff's Department. The initial Supplement B identified the petitioner's child, M-J-<sup>2</sup> as the victim of abusive sexual assault, indicated that the victim did not possess information concerning the criminal activity and was unsigned. The second Form I-918 Supplement B submitted in response to the RFE was signed by Social Service Practitioner [REDACTED] (certifying

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Name withheld to protect individual's identity.

official) of Children and Family Services. At Part 1, the certifying official identified the petitioner's child, M-J- as the victim of sexual assault. At Part 3.3, the certifying official cited lewd and lascivious act with a child under 14 under section 288(a) of the California Penal Code (CPC) as the criminal activity investigated or prosecuted.

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as "child, [M-J-], was sexually molested by the mother's, [petitioner], ex-boyfriend, [J-C-J-]." At Part 3.6, the certifying official did not describe any known or documented injury to the petitioner's child, but referred to an "attachment." At Part 4.2, the certifying official indicated that the victim was a child whose mother had been taking to therapy and meeting with D.A. At Part 4.5 regarding other information about the victim's helpfulness, the certifying official again made reference to an "attachment." An addendum report from the Superior Court of California County of San Bernardino, indicates that M-J-'s sibling was at risk of sexual abuse because M-J- was sexually molested by her stepfather J-C-J-. The report indicates that M-J- reported to the police that she was being sexually molested by her stepfather and that M-J- provided details and time frames regarding the sexual abuse which seemed extremely credible. The report indicates that J-C-J- was arrested with criminal charges of lewd act with a minor under 14 on March 3, 2010. The record also contains a temporary restraining order which was filed against J-C-J- on April 9, 2010.

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 she was not named as the victim on the initial Form I-918 Supplement B. In the RFE, the director requested the petitioner to submit, *inter alia*, a properly completed Supplement B identifying the petitioner as the victim. Although the petitioner submitted a new Supplement B as described above, the second Supplement B did not list the petitioner as the victim.

On appeal, counsel contends that the petitioner qualifies for a U nonimmigrant visa because she is the mother of a minor U.S. citizen child who was assaulted by her stepfather.

#### *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 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 Forms I-918 Supplements B were insufficient because they did not name the petitioner as the victim in Part 1. On appeal, counsel claims that the petitioner still qualifies for a U nonimmigrant visa. 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 second Form I-918 Supplement B

identifies the petitioner's daughter as the victim in Part I and references the attached addendum report in Parts 3.5 and 4.5. The second Form I-918 Supplement B and the attached addendum report do not otherwise discuss the petitioner's involvement in the detection, investigation or prosecution of the offense committed against her daughter. While the second Form I-918 Supplement B indicates that the petitioner possessed information concerning the criminal activity; has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity; and has taken the child to therapy and meets with the district attorney, the record clearly establishes that the petitioner's daughter was the one who possessed and provided the required information and the petitioner herself states that she was unaware of the criminal activity until after it occurred. Moreover, the addendum report clearly reflects that the petitioner's daughter was not incompetent or incapacitated since she provided all of the information in regard to the sexual assault.

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. 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 certifications submitted by the petitioner in this case do not meet this requirement.

*Conclusion*

As in all visa classification proceedings, the applicant bears the burden of proof to establish her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has failed to meet her burden and the appeal will be dismissed. The petition will remain denied.

**ORDER:** The appeal is dismissed.