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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



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



D14

Date: **APR 09 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.

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 The director's decision shall be withdrawn and the matter remanded to the director for further action.

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 he was helpful, is helpful, or is likely to be helpful in the investigation or prosecution of qualifying criminal activity because he unreasonably refused to provide ongoing assistance to a criminal investigation past the initial onset of the investigation. On appeal, counsel contends that the petitioner did not fail to cooperate with law enforcement because law enforcement officials did not affirmatively articulate a reasonable request for further information or assistance with which the petitioner failed to comply; the petitioner complied with the Act by providing information and assistance at some point in the investigation of the crime; and the director incorrectly applied the regulations by requiring the petitioner to "press charges." Counsel also submits a declaration from the petitioner and a letter from Detective [REDACTED] of the Aberdeen, Washington Police Department.

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). Felonious assault 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, he has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclud[es] 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 last entered the United States without inspection, admission or parole in May 2009. On July 26, 2010, the petitioner filed the Form I-918 U petition. On December 17, 2010, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit evidence in support of his claim that he 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. 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 U petition.

The Form I-918 Supplement B submitted by the petitioner was signed by [REDACTED] Administrative Sergeant of the Aberdeen, Washington Police Department (certifying official). At Part 3.1 the certifying official identifies the criminal activities of which the applicant was a victim as felonious assault, and “Other – felony vehicular assault.” At Part 3.3, the statutory citation(s) for the criminal activity being investigated or prosecuted is listed as 46.61.522 of the Revised Code of Washington (RCW). At Part

3.5, the certifying official refers to the attached police report to describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner. At Part 3.6, the known injuries are listed as: “[The petitioner], the victim in this criminal investigation, was injured by a vehicle driven by suspect F-L-P-¹, as described in the attached police report. [The petitioner] was hospitalized due to his injuries, as reflected in the attached records from the Emergency Department of the Grays Harbor Community Hospital.”

The certifying official notes in Part 4 of the Form I-918 Supplement B that the petitioner possesses information concerning the criminal activity listed in Part 3 and has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity. In Part 4.5, the certifying official states:

[The petitioner] cooperated with the investigation of an incident of felonious vehicular assault in which [the petitioner] was a victim. The suspect was [F-L-P]. [The petitioner] eventually signed a form stating that he did not want to pursue charges against [F-L-P] and was helpful in providing the factual information that our police department needed for the proper investigation of the crime.

The certifying official, in Part 4.4, confirmed that the petitioner had *not* unreasonably refused to provide assistance in a criminal investigation and /or prosecution of the crime. In a police report, dated September 6, 2008, the Aberdeen Police Department described the criminal activity investigated as vehicular assault which involved F-L-P-, the petitioner’s cousin, and resulted in abrasions, contusions and a possible left leg fracture for which the petitioner received treatment at the Community Hospital. Medical records indicate that the petitioner was treated at Grays Harbor Community Hospital on September 6, 2008 for abrasions and contusions to the head, face and leg resulting from his having been dragged by a car.

In his declaration, dated February 4, 2011, the petitioner describes how he was dragged by the car while his head was in the window and that after he fell out of the window the car ran over his leg. He states that his injuries were substantial, that he lost consciousness and remained in the hospital for one day. He states that he could not walk by himself and required assistance for approximately three weeks after he was released from the hospital. He states that he still suffers from the injuries where the car ran over his knee. He explains that it hurts whenever he walks and that the pain is more intense with the cold, which affects his work outside picking brush.

In a declaration, dated January 24, 2011, the petitioner’s brother states that the petitioner was hit and dragged by a car. He states that the petitioner was hospitalized and he was not able to move properly for two months thereafter. He states that the petitioner has not been able to work like he used to because he is really weak and cannot do heavy work in the mountains. He states that he has to help the petitioner with his work.

¹ Name withheld to protect identity of individual.

In a letter, dated February 18, 2011, the petitioner's mother-in-law states that the petitioner was unable to do simple tasks after he was involved in a vehicular assault and he has since been unable to provide for his family as he once did because of his knee injury. She states that the petitioner has been unable to work in the woods. She states that the petitioner briefly found indoor employment which was good for his knee, but that he now stays at home with the children.

Analysis

The regulation at 8 C.F.R. § 214.14(a)(14) defines *victim of qualifying criminal activity* as an alien who is directly and proximately harmed by qualifying criminal activity. The record establishes that the crime of which the petitioner was a victim, felony vehicular assault, is substantially similar to the qualifying crime of felonious assault, as listed at section 101(a)(15)(U)(iii) of the Act. The relevant evidence also shows that the petitioner was directly and proximately harmed by the qualifying crime. Accordingly, he has established the requisite victimization.

The petitioner has also established his helpfulness to a law enforcement agency in the investigation of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act. The Form I-918 Supplement B, police report and a letter from Detective [REDACTED] of the Aberdeen Police Department, indicate that while the petitioner signed a waiver of prosecution, he did not unreasonably refuse to cooperate with law enforcement in the investigation or prosecution of the crime. Neither the certifying official nor Detective [REDACTED] indicated that the Aberdeen Police Department or any other law enforcement agency requested the petitioner to provide further assistance in the investigation or prosecution of the crime. To the contrary, the certifying official specifically stated that the petitioner had not unreasonably refused to provide assistance in the criminal investigation and/or prosecution. Accordingly, the director's determinations to the contrary are withdrawn.

The record shows that the crime took place in the United States, that the petitioner possessed information relating to the qualifying criminal activity of which he was the victim, that he helped in the detection and investigation of the qualifying crime of felonious assault, and that he suffered substantial physical abuse resulting from his victimization. Accordingly, the petitioner has established his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

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 been met as to the petitioner's statutory eligibility for U nonimmigrant status and the director's decision to the contrary shall be withdrawn.

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants

must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. *See Decision of the Director*, dated July 1, 2011. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, as the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, we will remand the matter to the director for reconsideration of the Form I-192.

ORDER: The July 1, 2011 decision of the Vermont Service Center is withdrawn. Because the petitioner is statutorily eligible for U nonimmigrant classification, the case is remanded to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 petition, which if adverse, shall be certified to the Administrative Appeals Office for review.