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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

B14

Date: [REDACTED] Office: VERMONT SERVICE CENTER FILE: [REDACTED]

APR 23 2012

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:

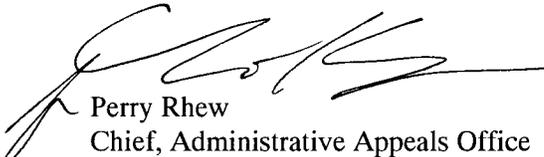
SELF-REPRESENTED

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 and 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

U nonimmigrant classification may be granted to an alien who demonstrates, in pertinent part, that he or she “possess information concerning [qualifying] criminal activity” and “has been helpful . . . to a Federal, State, or local law enforcement official . . . investigating or prosecuting [qualifying] criminal activity.” Section 101(a)(15)(U)(i)(II), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II), (III).

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[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.*

In addition, the petitioner must demonstrate that he or she: “possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity.” 8 C.F.R. § 214.14(b)(2).

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.

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 Mexico who claims to have last entered the United States in March 2002 without being inspected, admitted or paroled by an immigration officer. On July 22, 2010, the petitioner filed a Form I-918 U petition along with a *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) to obtain, in part, evidence relating to the Form I-918 Supplement B, which the petitioner subsequently submitted. The director denied the petition because the petitioner did not demonstrate her helpfulness to law enforcement authorities in the investigation or prosecution of the domestic violence perpetrated against her by her live-in boyfriend, and because she did not possess information about the criminal activity. On appeal, the petitioner submits a statement, a psychological evaluation, evidence that she had resided in a battered women's shelter, evidence that she and her children received counseling services, and documents already included in the record. The petitioner states that she cooperated with law enforcement authorities and that any inconsistencies between what she told police at the time of the domestic violence incident and what

she subsequently recounted to a detective resulted from the trauma she experienced on the night that she was attacked by her boyfriend.

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 withdraw the director's determination that the petitioner did not possess credible and reliable information concerning the qualifying criminal activity, but affirm his finding that the petitioner was not helpful to law enforcement authorities in the investigation or prosecution of the qualifying crime.

The record contains a law enforcement certification that was signed by an officer of the Visalia, California Police Department (certifying official) on May 12, 2010. The certifying official indicated at Part 4 that the petitioner possessed information about the criminal activity, was helpful in the investigation of the qualifying domestic violence criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. At Part 4.5, the certifying official indicated that the petitioner had come to the police station with a translator and provided an additional statement about the domestic violence incident, and that the petitioner "had assured the Department she will testify in court in this matter." However, the police reports that were submitted to support the Form I-918 Supplement B contained information that was inconsistent with the certifying official's statements.

According to the March 31, 2010 police report, which was taken on the date of the domestic violence incident, the petitioner's boyfriend grabbed the petitioner by the hair and dragged her into the kitchen when she returned home from a trip to a neighboring town, at which time he punched her in the face. The petitioner told the police officer at the scene that she did not want to prosecute her boyfriend, but when asked by the officer whether she wanted an emergency order of protection against her boyfriend, the petitioner replied "yes" and such order was obtained.

In response to the director's RFE, the petitioner submitted supplemental police reports dated May 20, 2010; July 6, 2010; and July 30, 2010. The May 20, 2010 report recounted events that transpired on May 11, 2010; May 12, 2010; and May 19, 2010. The reporting officer noted that he had contacted the petitioner by telephone on May 11, 2010 at which time the petitioner told him that she only wanted her boyfriend to stay away from her; she didn't want any criminal prosecution, or to testify against him in any court proceedings. The officer noted further that the petitioner was unable to provide any contact information for her boyfriend so the officer could take his statement.

In the May 12, 2010 entry, which is the date on which the certifying official signed the Form I-918 Supplement B, the officer stated that the petitioner and a translator went to the police statement "for the purpose of having paperwork completed for a U-Visa." The officer stated:

When it was explained to her that the U-Visa application required her cooperation with law enforcement for the criminal prosecution of the suspect in her case, [the petitioner] decided that

she now wished to pursue charges against [her boyfriend]. With [the translator] translating for me, I expressed my concern about how cooperative [the petitioner] will continue to be throughout the court process and asked if she would be willing to provide me with a recorded statement about this incident. [The petitioner] agreed to provide me with one while [the translator] continued to translate for me.

* * *

I asked [the petitioner] if she now wished to pursue criminal charges against [her boyfriend]. She indicated that she did. I asked if she was willing to testify in court. She indicated that she was[.]

In the report dated July 6, 2010, which recounted events from June 14, 2010; June 16, 2010; and June 18, 2010; the officer stated that he made attempts to contact the petitioner by telephone, but there was no answer and no answering machine on which to leave a message. The officer also described visiting the petitioner's home and her neighbor on June 18, 2010, but neither individual responded to knocks on their doors. The officer stated that he left his business cards at both residences, asking them to contact him. The officer stated that as of the date of the report (July 6, 2010), the petitioner had not contacted him.

In the final police report, dated July 30, 2010, the officer stated that the district attorney had requested further information on the progress of the investigation. The officer wrote: "Given the fact that the victim did not want prosecution until she learned that her request for a U-Visa would be adversely affected by her lack of cooperation, coupled with the fact that she has not responded to my repeated attempts to contact her, I believe that any further attempts to contact her would be fruitless."

In his denial decision, the director noted the petitioner's lack of continuing cooperation since she obtained the Form I-918 Supplement B, as evidenced by the police reports written in July 2010. On appeal, the petitioner states that she was helpful to the police and that it is possible that she was living at the battered women's shelter when the police officer went to her home looking for her. The petitioner states that she never refused to cooperate and that she has always been and is still ready to testify against her boyfriend.

U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(4). As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence to Satisfy the Eligibility Requirements. While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

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.” Here, although the certifying official affirmed the petitioner’s helpfulness at Part 4.2 – 4.4, the police reports written after the May 12, 2010 date of the Form I-918 Supplement B demonstrate that the petitioner failed to provide ongoing cooperation to law enforcement authorities after the law enforcement certification was provided. Although the petitioner speculates that the reason for the police’s failure to contact her was due to her residence at the battered women’s shelter, the letter from [REDACTED], a Domestic Violence Counselor with Family Services of Tulare County, California, indicates that the petitioner was living at the shelter from April 1, 2010 until April 21, 2010, which was more than two months prior to the officer calling the petitioner and visiting her home in June 2010. While the regulation at 8 C.F.R. § 214.14(b)(3) provides for an exemption in the case of a petitioner who is under the age of 16, incapacitated, or incompetent, there is no evidence that these factors are present in the instant matter or that the certifying agency’s requests were unreasonable. Accordingly, we affirm the director’s finding that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity.

We do, however, withdraw director’s determination that the petitioner did not possess reliable or credible information relating to the criminal activity. While the petitioner did not initially tell the responding officer that her boyfriend held a knife at the time of the abuse, the police report from the March 31, 2010 incident indicates that the person making the 911 emergency phone call told dispatch that: “the male had threatened to cut or kill the victim with a knife.” The petitioner’s explanation that she failed to mention the knife to the responding officer due to the trauma she had experienced from the altercation with her boyfriend is reasonable. Accordingly, we withdraw the director’s finding that the petitioner did not possess information concerning the qualifying criminal activity.

Conclusion

The petitioner has established that she possessed information concerning the qualifying criminal activity. However, pursuant to the regulation at 8 C.F.R. § 214.14(b)(3), the relevant evidence fails to establish that the petitioner provided ongoing cooperation to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

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.