

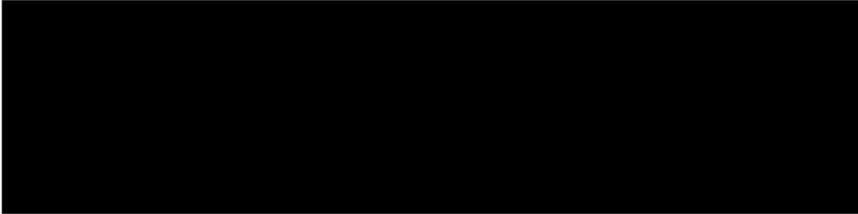
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

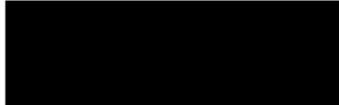


**U.S. Citizenship
and Immigration
Services**



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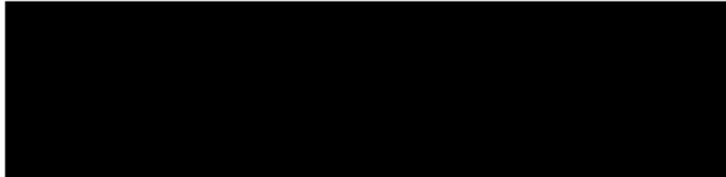
Date: **AUG 15 2012**

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Petition for U Nonimmigrant Status (Form I-918) 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.

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[.]

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).

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 petitioner is a native and citizen of Mexico who claims to have last entered the United States without inspection, admission or parole in March 1999. On May 21, 2010, the petitioner filed the Form I-918 U petition. On February 22, 2011, 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 had been helpful in the investigation or prosecution of qualifying criminal activity. 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 Form I-918 U 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.

On appeal, counsel contended that the petitioner did not fail to cooperate with law enforcement; it was the prosecutor's decision to not move forward in the case; and, as demonstrated by the Harris County District Attorney's letter, the petitioner has taken steps to attempt to further prosecute the case. Counsel indicated that he would submit an additional brief; however, more than 11 months have passed and no supplemental brief or evidence has been submitted for consideration.

Analysis

The regulation prescribes that a Form I-918 U petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state, in part, that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity. *Id.*

The Form I-918 Supplement B submitted by the petitioner was signed by J.R. Levingston, Acting Captain, Special Crimes Division, Houston Police Department (certifying official). At Part 3.1 the certifying official identifies the criminal activities of which the applicant was a victim as domestic violence and assault (contact), with the date of the certified criminal activity at Part 3.2 noted as February 24, 2008. At Part 3.3, the statutory citation(s) for the criminal activity being investigated or prosecuted is listed as section 22.01 of the Texas Penal Code (TPC) (assault). At Parts 3.5 and 3.6, the certifying official describes the criminal activity being investigated and/or prosecuted and the involvement of the petitioner as: "[The petitioner] stated that she was assaulted. Suspect punched her with a closed fist in her stomach and arms." The certifying official notes that the responding officer did not notice any physical markings on the petitioner.

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 that there has been three separate incidents reported by the petitioner in regard to assault (contact) family violence and that all three incidents were cleared for lack of prosecution. The certifying official notes that the statute of limitations had expired on the 2001 and 2003 incidents. The certifying official,

in Part 4.4, states that the petitioner had not unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime.

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.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007)

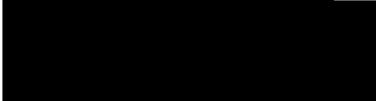
The petitioner bears the burden of establishing, by a preponderance of the evidence, that she was helpful to law enforcement authorities in the investigation or prosecution of qualifying criminal activity. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). However, the evidence that the petitioner has submitted fails to meet her burden of proof.

The certifying official certified the criminal activity that occurred on February 24, 2008, which according to the police narrative, involved an incident of assault in the road, with the petitioner and another individual named as the complainants. The police report does not identify the perpetrator of the assault. On the Form I-918 Supplement B, the certifying official indicated that the case was cleared for lack of prosecution, but he failed to state what investigation, if any, was undertaken and the police narrative also does not contain this information. The certifying official also presented no information regarding the petitioner's helpfulness to law enforcement authorities in light of his indication on the Form I-918 Supplement B that the case was "cleared – lack of prosecution."

While the letter from [REDACTED] Bilingual Case Worker, Family Law Division of the [REDACTED] County District Attorney's Office, dated April 19, 2011, indicates that the petitioner appeared in the office on personal business, the case worker only indicates that the petitioner discussed the history of physical abuse by her estranged husband and was given options for her future safety and security. It does not indicate that the petitioner was helpful in the investigation or prosecution of the certified crime that occurred in 2008.

Overall, the record lacks evidence that the petitioner was helpful to the certifying agency in the investigation or prosecution of the criminal activity that occurred in February 2008 upon which her petition is based, as required by subsection 101(a)(15)(U)(i)(II) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(b)(3). The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied.

Conclusion



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As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. 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. The petition remains denied.