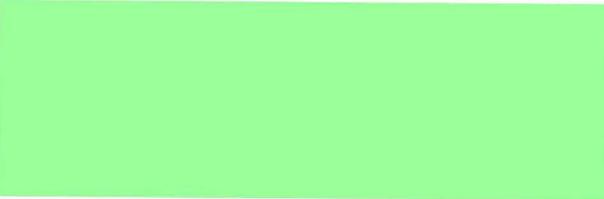


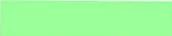


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 19 2013** 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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 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 in the investigation or prosecution of qualifying criminal activity because he did not continue to be helpful after he reported the crime. On appeal, counsel submits a new declaration from the petitioner, a brief in which he asserts that the petitioner was helpful even though he initially did not want his aunt arrested and did not appear for the trial, and other evidence.

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). Domestic violence 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 “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.*

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 China who last entered the United States on June 19, 2008 as a nonimmigrant student. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U Petition) on July 18, 2011. On February 24, 2012, the director issued a Request for Evidence (RFE) that the petitioner had been helpful in the investigation or prosecution of a qualifying criminal activity. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s helpfulness to the certifying agency. The director denied the petition on this ground, and the petitioner filed a timely appeal.

The Petitioner has not Established his Continuing Helpfulness to Law Enforcement Authorities

The petitioner stated in his affidavits that when he came to the United States, he and his mother moved into his aunt’s home. On May 7, 2010, he got into a confrontation with his aunt, and she began to hit him with a rolling pin. The petitioner grabbed the rolling pin away from his aunt and tried to retreat, but she grabbed a knife and cut the petitioner on his stomach. The next morning, the petitioner reported the incident to the police, but because he still lived in his aunt’s house, he told the police he did not want to press charges at that time. *See also* [redacted] Offense Report (Case No. [redacted]). After the petitioner moved out of his aunt’s house, he told someone at the District Attorney’s Office that he was willing to help in the prosecution of his aunt, and provided them with his

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new address. He received letters from a Victim Witness coordinator informing him of upcoming trial dates, but he later learned that the subpoena for him to testify had been sent to his old address and that he had missed the trial.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted was signed by [REDACTED] (certifying official) of the [REDACTED]

When describing the petitioner's helpfulness to law enforcement authorities, at Part 4.5, the certifying official indicated that the petitioner was cooperative when the case was first assigned to court, but when they tried to make contact with him for trial through telephone and email, they were unable to reach him and the case was dismissed. The certifying official also noted that after the case was dismissed the petitioner contacted her office, stated he had not received their calls and messages, and was cooperative and ready to prosecute.

When denying the petition, the director noted that section 101(a)(15)(U)(i) of the Act requires evidence of the petitioner's helpfulness to law enforcement authorities in order to establish eligibility for U nonimmigrant status, and that eligibility for U nonimmigrant status requires the ongoing responsibility to cooperate with the certifying agency. The director acknowledged that the petitioner seemed to have been helpful in the outset of the investigation by reporting the crime, but found that by refusing to press charges and not showing up for the trial, the petitioner stopped being helpful and refused to provide helpful assistance to law enforcement in continuing an investigation or prosecution of the qualifying 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. The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(b)(3) which requires the petitioner to show that "since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested." We acknowledge the fear and emotional turmoil that the petitioner faced when deciding whether to provide assistance to the police with an investigation or prosecution of his aunt, particularly when he was still living with her. Nevertheless, the regulations require the petitioner to 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); *Supplementary Information*, 72 Fed. Reg. at 53019 ("excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when 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). The record contains no indication that either of these exceptions exist in this case.

On appeal, counsel asserts that the certifying official said that the petitioner was helpful and that he agreed to continue to help after the case was dismissed. Counsel contends that the petitioner told the District Attorney not to prosecute while he was still living in his aunt's house and that the only reason

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he did not show up for the trial was because the subpoena was mailed to his old address. In his declaration on appeal, the petitioner also notes that he asked the District Attorney not to prosecute until he had moved out of his aunt's house and that he never received the subpoena as it had been sent to his old address.

Here, the petitioner reported his aunt's assault to the police, but then asked them not to press charges until he moved. More importantly, the petitioner failed to appear for the trial and as a result, the charges against his aunt were dropped. Although the petitioner asserts the only reason he did not appear was because the subpoena was sent to his old address, the evidence in the record does not support this claim. In the Form I-918 Supplement B, the certifying official clearly stated that she tried to make contact with the petitioner through the telephone number and e-mail address that he had provided, but they were not able to reach him. The [REDACTED] Offense Report also reflects that law enforcement tried to contact the petitioner several times and left messages on his cellular and work telephones in addition to his former home number. Counsel and the petitioner fail to acknowledge this fact on appeal.

In order to be eligible for U nonimmigrant status, the petitioner's helpfulness to law enforcement must be ongoing. Here, the petitioner did not provide ongoing help to law enforcement when he declined to press charges and when he did not appear to testify at his aunt's trial after law enforcement officials repeatedly tried to contact him. The record contains no indication that the certifying agency's requests were unreasonable. While counsel asserts that the petitioner's failure to assist was not willful, the relevant evidence does not demonstrate that the petitioner was incapacitated or incompetent at the time the police department requested his assistance. Accordingly, the petitioner's refusal to assist with the certifying agency's reasonable efforts to investigate and prosecute the qualifying criminal activity precludes satisfaction of the regulatory requirement. 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).

Conclusion

The petitioner failed to show that he was helpful to law enforcement in the investigation or prosecution of a qualifying crime and that he did not refuse to provide cooperation to the certifying agency when reasonably requested, as required by 8 C.F.R. § 214.14(b)(3). Accordingly, the petitioner is ineligible for U nonimmigrant classification.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.