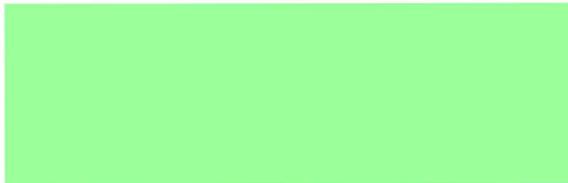


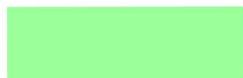
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

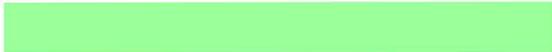


U.S. Citizenship
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(b)(6)

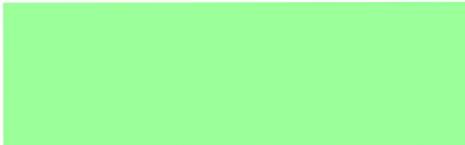


Date: **MAR 27 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

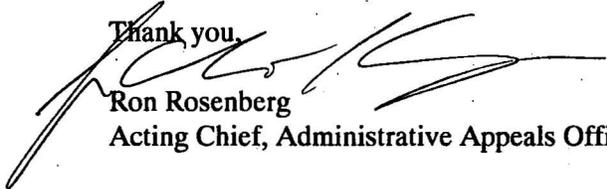


INSTRUCTIONS:

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

(b)(6)

Page 2

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 she was helpful in the investigation or prosecution of qualifying criminal activity because she unreasonably refused to provide assistance to the criminal investigation. On appeal, counsel submits an additional declaration by the petitioner and asserts that having reported the crime is sufficient to show helpfulness to law enforcement and that the petitioner's refusal to press charges was reasonable because she feared her husband.

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, [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[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 Mexico who claims to have last entered the United States in January 2005 without inspection or admission. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U Petition) on April 22, 2011. On January 6, 2012, the director issued a Request for Evidence (RFE) that she 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 her Helpfulness to Law Enforcement Authorities

The petitioner stated in her March 2011 declaration that she met her husband in Mexico and that they began courting in 1998. In or about May 1999, she and her husband entered the United States and began living together. They were married on June 30, 2007. The petitioner reported that her husband began abusing her in the United States before they got married, but that six months into the marriage the violence escalated and that he began to insult her and demand sexual relations. The petitioner stated that her husband frequently threatened to have her deported and to take her daughters away from her. The petitioner recounted that on September 21, 2009, the day after a birthday party for their

(b)(6)

Page 4

daughter, her husband became upset with her because she refused to have sexual relations with him and they argued. The petitioner hit his lip and he punched her in the face. The petitioner left the house out of fear for her safety and contacted the police. The petitioner filed an offense report against her husband. The petitioner indicated that she did not press charges against her husband because she feared retaliation and because he threatened to have her deported and take away her daughters.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted was signed by Chief Deputy [REDACTED] (certifying official) of the Cameron County, Texas Constable Office. The certifying official stated that the petitioner was a victim of domestic violence and his agency investigated the assault committed against her. When describing the petitioner's helpfulness to law enforcement authorities, the certifying official indicated that the petitioner has not been, is not being, or is not likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. The Form I-918 Supplement B did not include an attached statement as required. At Part 3.5, the certifying official stated that the petitioner did not wish to pursue charges.

When denying the petition, the director noted that section 101(a)(15)(U)(i)(III) 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, 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. Here, the Form I-918 Supplement B that the petitioner submitted is not one described at section 214(p)(1) of the Act because the certifying official indicated that the petitioner was not helpful to the investigation or prosecution of the criminal activity that she reported. As stated earlier, 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." 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. Here, the certifying official indicated at Part 4.2 of the Form I-918 Supplement B that the petitioner had not been, was not being, or was not likely to be helpful to law enforcement authorities in the investigation or prosecution of the criminal activity. Without evidence from the certifying agency that establishes the petitioner's helpfulness to law enforcement authorities in the investigation or prosecution of qualifying criminal activity, the petitioner cannot establish that she was helpful to law enforcement authorities as required by section 101(a)(15)(U)(i)(III) of the Act. She, therefore, cannot establish her eligibility for U nonimmigrant status as the victim of a qualifying crime or criminal activity.

(b)(6)

Page 5

On appeal, counsel notes that the petitioner reported the assault against her by her husband to the police and asserts that having been helpful in the detection of a crime is sufficient for eligibility under the regulations where the victim's continued assistance was not specifically requested. However, as counsel himself notes, the Cameron County Constable's Office noted that the petitioner had not been helpful because she chose not to press charges. Counsel further contends that the officer asking the petitioner if she wanted to press charges should not be viewed as a request for assistance. Alternately, counsel contends that the request to press charges was not reasonable given the petitioner's husband's previous abuse and where the petitioner feared retaliation. In support of his position, counsel cites to the interim rule for Adjustment of Status to Lawful Permanent Resident for Aliens in U Nonimmigrant Status. The interim rule for Adjustment of Status does not apply to the adjudication of the initial U visa application.

In her declaration submitted on appeal, the petitioner reiterates that her husband beat her and threatened to call Border Patrol and take her daughters away from her. He also told the petitioner that if she reported him to the police, "it was going to be worse for [her]." She states that when asked to file charges against him, she was thinking about her and her children's safety and was afraid of her husband's threats and feared his retaliation. She recalls that she felt that "reporting the crime was enough." She reports that law enforcement did not contact her after she reported the crime, but if they had asked for more assistance or information she would have given them additional statements. The petitioner states that she feels her refusal to press charges was reasonable because of the history of abuse by her husband and because she feared for her and her children's lives.

We acknowledge the fear, abuse and emotional turmoil that the petitioner faced when deciding whether to provide assistance to the police with an investigation or prosecution of her husband's assault. Nevertheless, the regulations require the petitioner to 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); *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").

Here, the petitioner reported her husband's assault to the police. The certifying agency reasonably requested assistance by asking the petitioner if she would press charges, but the petitioner declined, as noted by the certifying official on the Form I-918 Supplement B. The Form I-918 Supplement B shows that after the petitioner refused to press charges, the case was closed. 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 she was helpful to law enforcement in the investigation or prosecution of a qualifying crime because she failed to provide information and assistance to the

(b)(6)

Page 6

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.