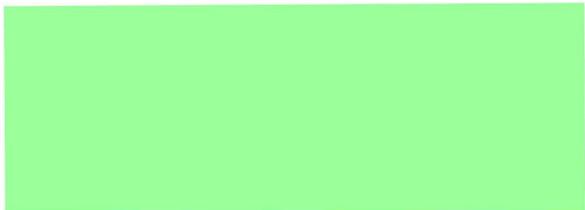


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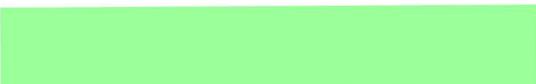
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAY 20 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

APPLICATION: 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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.

The director denied the petition because the petitioner did not establish that she was helpful to law enforcement. On appeal, counsel submits a brief and copies of documents already included in the record.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (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;

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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 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).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *Investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

In addition, like all other nonimmigrants, petitioners for U classification must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Petition for U Nonimmigrant Status (Form I-918 U petition) in order to waive any ground of inadmissibility.

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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who claims to have last entered the United States on January 1, 1998 without inspection. The petitioner filed the instant Form I-918 U petition with an accompanying I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) on August 5, 2011. On March 9, 2012, the director issued a Request for Evidence (RFE) that the petitioner possessed information about the qualifying criminal activity and had been helpful to law enforcement. The petitioner responded with a new Form I-918 Supplement B signed by a certifying official, which indicated that she did possess information about the qualifying criminal activity. However, no additional information was submitted regarding her helpfulness to law enforcement. The director found the petitioner satisfied the eligibility requirement under section 101(a)(15)(U)(i)(II) of the Act but the record did not establish her helpfulness to the certifying agency. Accordingly, the director denied the petition and the petitioner’s Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, an alien must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

The record contains two law enforcement certifications, both of which were signed by [REDACTED] Santa Rosa, California Police Department (certifying official) on June 2, 2011 and March 26, 2012, respectively. On both law enforcement certifications the certifying official indicated at Part 4 that the petitioner 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. According to an attached incident report, the petitioner called the police on February 2, 2002 after her husband, who was intoxicated, pushed her out of a parked vehicle and forced himself into their locked bedroom. The report stated that the petitioner’s three-year old son witnessed her husband push her out of the vehicle. The responding officer noted no visible injuries on the petitioner. The report indicated that the petitioner did not want to pursue charges against her husband for battery but she obtained an emergency protective order against him. The petitioner’s husband was arrested for domestic battery, in violation of California Penal Code § 243(e)(1). On February 5, 2002, a judge in the Superior Court of California, County of Sonoma, discharged the case against the petitioner’s husband after no complaint was filed.

In his denial decision, the director stated that the petitioner did not demonstrate her helpfulness because she refused to press charges against her husband and, consequently, no complaint was filed. On appeal, counsel states the certifying official in two separate law enforcement certifications attested to the petitioner’s helpfulness, and if the certifying official’s endorsement cannot be trusted “then it would seem that the essential value and purpose of the I-918 Supplement B is negated and ultimately rendered moot.” Moreover, even though the petitioner refused to press charges, she did everything she could to ensure her husband was arrested, by calling the police, providing them with a detailed statement, and obtaining an emergency protective order. Counsel claims the decision to prosecute the petitioner’s husband “was in the hands of the District Attorney.”

In this case, the record demonstrates that the petitioner was helpful to the certifying agency in the detection and investigation of domestic violence, a qualifying crime of which she was the victim. The record contains a Santa Rosa Police Department Incident Report which identifies the offense investigated as domestic violence in the form of battery and identifies the petitioner as the person reporting the crime. In addition, the sergeant indicated on both of his law enforcement certifications that the petitioner had been helpful in the investigation of the qualifying criminal activity and she had not unreasonably refused to provide assistance in the investigation or prosecution of the criminal activity.

The statute and regulations do not require the petitioner to be helpful in both the investigation and prosecution of the qualifying criminal activity, or for the investigation or prosecution with which the alien assists to result in a criminal conviction. It is only the alien’s assistance in the investigation or prosecution which is required. Section 101(a)(15)(U)(i)(III) of the Act. The petitioner’s reluctance to aid in the

prosecution of her spouse for domestic violence does not negate her assistance in the investigation into her spouse's criminal activity. The preponderance of the relevant evidence of record demonstrates that the petitioner has been helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act. The director's determination to the contrary is hereby withdrawn.

Substantial Physical or Mental Abuse

The petitioner has established that the qualifying criminal activity occurred in the United States, she possesses information concerning the criminal activity, and she has helped in the investigation and/or prosecution of the qualifying crime of domestic violence; however, she must also establish that she suffered substantial physical or mental abuse as a result of the qualifying crime. In his denial decision, the director did not evaluate substantial abuse under section 101(a)(15)(U)(i)(I) of the Act. Therefore, the matter will be remanded to the director so that he may evaluate whether the petitioner has suffered substantial abuse as a result of being the victim of qualifying criminal activity and issue a new decision.

Conclusion

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 C.F.R. § 214.14(c)(4). The petitioner has established that the qualifying criminal activity occurred in the United States, she possesses information concerning the criminal activity, and she has helped in the investigation and/or prosecution of the qualifying crime of domestic violence. However, the petitioner must establish that she suffered substantial physical or mental abuse as a result of her victimization, as required under section 101(a)(15)(I)(i)(I) of the Act. The director's denial did not address substantial abuse to the petitioner. Consequently, the matter must be remanded to the director for issuance of a new decision on the Form I-918 U petition.

ORDER: The director's decision is withdrawn. The matter is returned to the director for issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the AAO for review.