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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: **OCT 07 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal, and the matter is again before the AAO on motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the underlying 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.

The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner failed to establish that he continued to be helpful in the investigation or prosecution of qualifying criminal activity. The AAO dismissed the petitioner’s appeal because he failed to establish his continuing helpfulness to law enforcement authorities. With the present motion, counsel submits additional evidence.

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;

* * *

(V) (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,

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.*

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

Facts and Procedural History

As the facts and procedural history were adequately documented in our previous decision, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of China who last entered the United States on June 19, 2008 as a nonimmigrant student. When he arrived in the United States, he and his mother moved into his aunt’s home. On May 7, 2010, the petitioner got into a confrontation with his aunt, and she hit him with a rolling pin. He got the rolling pin away from his aunt, but she grabbed a knife and cut the petitioner on his stomach. The next morning, he reported the incident to the police, but refused to press charges because he was still living at his aunt’s house. After the petitioner moved out of his aunt’s home, he told the District Attorney’s Office that he wanted to help in the prosecution of his aunt, and provided them with a new address. He received letters regarding upcoming trial dates against his aunt, but the subpoena for him to testify was sent to his old address and he missed the trial.

The record contains a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), which was signed by Assistant District Attorney Jill Stotts, Richmond District Attorney’s Office, Texas (certifying official), on June 21, 2011. On the certification, the certifying official indicated that the petitioner had been or was likely to be helpful in the investigation of the qualifying domestic violence

criminal activity. In Part 4, Ms. [REDACTED] stated that the petitioner was cooperative when the case was first assigned to the court, and he gave his telephone numbers and e-mail address where he could be contacted. She stated that before the trial date, they were unable to reach the petitioner at the telephone numbers and e-mail address he provided, and the case was dismissed. After the case was dismissed, the petitioner went to the District Attorney's Office and claimed that he had not received the telephone calls or e-mails and he was ready to cooperate.

The petitioner filed the instant Form I-918 U petition on July 19, 2011. The director denied the petition because the petitioner did not demonstrate his helpfulness to the law enforcement agency because he did not continue to be helpful in the investigation or prosecution of qualifying criminal activity. On appeal, counsel asserted that the petitioner was helpful even though he initially did not want his aunt arrested and did not appear for the trial. In its February 19, 2013 decision on appeal, incorporated here by reference, the AAO stated that even though the petitioner claimed he never received the subpoena for the trial because it was sent to his old address, the record did not support his claim. On appeal, the petitioner did not acknowledge that the certifying official reported that her office left messages on the petitioner's telephone numbers and sent him e-mail messages regarding the upcoming trial date. The AAO dismissed the petitioner's appeal because he did not establish his ongoing helpfulness to the law enforcement agency when he declined to press charges and did not appear at the trial after law enforcement officials repeatedly tried to contact him.

On motion, counsel submits a brief, affidavits from the petitioner and his mother, and two letters in support of the petitioner. Counsel's submission meets the requirements for a motion to reopen, but not a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(2)-(3).

In his brief in support of the motion, counsel states that the subpoena for the petitioner to appear at the trial was sent to the wrong address, even though the District Attorney's Office had his new address. Counsel states that the petitioner was "anxiously waiting for the subpoena," since he was informed that he would be receiving it by mail. He claims that telephone and e-mail messages were not the proper method to keep in touch with the petitioner, and only official letters from the District Attorney's Office would be "considered as proper means of communication when dealing with this kind of critical matter." Counsel asserts that when the Court received no answer from the petitioner, they "should [have] check[ed] with the [District Attorney's] Office to ensure that the mailing address was correct or updated." In his updated affidavit, the petitioner states he "never expected to receive such a formal and official notice as a Court Subpoena in email or by phone call" and if he had received the notice, he "would have shown up to give assistance." In her statement, the petitioner's mother states the petitioner cooperated with the investigation against his aunt, and when they never received a subpoena or notice about the trial, they went to the District Attorney's Office and discovered the case had been dismissed. She claims that the prosecutor told them that they had sent an e-mail to the petitioner, but when the petitioner checked, there was no message from the District Attorney's Office. In their letters, Mr. [REDACTED] and Mr. [REDACTED] state the petitioner missed the trial because the subpoena was sent to the wrong address, but neither Mr. [REDACTED] nor Mr. [REDACTED] indicate that they have any personal knowledge of the events.

The [REDACTED] reflects that law enforcement left several messages on the petitioner's work and cellular telephone numbers, in addition to his former home number. In addition, based on Ms.

statement, the District Attorney's Office was unable to reach the petitioner at the telephone numbers and e-mail address he provided. While the record indicates that the subpoena for the petitioner to appear at the trial against his aunt was sent to the wrong address; as noted in our previous decision, neither counsel nor the petitioner explain why the petitioner did not receive the messages left on the telephone numbers that he provided. Counsel's only acknowledgement regarding the petitioner receiving the messages, is that he would likely not "pay attention to any" voicemail messages left on his telephone. The record establishes that the petitioner initially cooperated with the law enforcement agency, but the case was dismissed after the petitioner declined to press charges and failed to testify at trial. The petitioner has not established his ongoing cooperation with the certifying agency. 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 has not complied with the regulation at 8 C.F.R. § 214.14(b)(3) regarding his ongoing cooperation with the certifying agency. For this reason, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act and his petition must remain denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is granted. The appeal remains dismissed and the petition remains denied.