

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

(b)(6)

Date: **APR 16 2014**

Office: VERMONT SERVICE CENTER

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 (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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal, a decision it affirmed on motion. The matter is again before the AAO on a second motion to reopen and reconsider. The motion will be granted. The decision dismissing the appeal shall be affirmed and the underlying petition will remain denied.

Pertinent Facts and Procedural History

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 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 did not establish his continuing helpfulness in the investigation or prosecution of qualifying criminal activity. The AAO affirmed the director's decision, noting that the petitioner failed to establish his continuing helpfulness to law enforcement authorities. The petitioner, through counsel, filed a motion to reopen and reconsider the AAO's decision and submitted additional evidence. The AAO granted the motion but ultimately affirmed its prior determination that the petitioner did not establish his ongoing cooperation with the certifying agency.

On motion, counsel reiterates her assertions in the first motion regarding the petitioner's continuing helpfulness to law enforcement officials. In support of her claim, counsel submits a brief, a letter from Assistant District [REDACTED] and documents already included in the record. As the petitioner, through counsel, has submitted new facts supported by documentary evidence, the motion to reopen will be granted. See 8 C.F.R. § 103.5(a)(2). However, counsel's submission does not meet the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3). Counsel fails to establish that the AAO's February 19, 2013 and October 7, 2013 decisions were based on an incorrect application of law or U.S. Citizenship and Immigration Service (USCIS) policy as required, and she does not support her contentions with any pertinent precedent decisions. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

Analysis

As the applicable law, facts and procedural history were adequately documented in our dismissals of the appeal and the petitioner's first motion to reopen and reconsider, they shall not be repeated here. Rather, this decision will focus on the assertions in counsel's brief and the letter from Assistant District Attorney [REDACTED] that were filed in conjunction with this motion to reopen and reconsider.

Counsel explains that when the petitioner lived with his aunt, she attacked him with a kitchen knife. The attack was reported to the police, and his aunt was charged with aggravated assault. The petitioner later moved out of his aunt's house and informed the district attorney's office of his new address. He received multiple letters from the district attorney's office regarding the investigation, including a letter indicating dates for a hearing and the trial. The letter scheduling the hearing and trial indicated that a subpoena would follow; however, the subpoena was sent to the petitioner's old address. The subpoena was returned and was never forwarded to the petitioner's correct address. The petitioner went to the district attorney's office on the day of the scheduled hearing but was sent home and told to wait for the subpoena. The district

attorney's office claims that they attempted to call the petitioner and send the subpoena through e-mail. However, the petitioner failed to appear for the trial and the case against his aunt was dismissed.

Counsel claims the petitioner did not appear for the trial because of miscommunication; however, he complied with every reasonable request he received and he "cannot be held accountable for his failure to attend the trial when he was not properly served." She states the district attorney's office failed to accurately record the petitioner's address and when the subpoena was returned, they failed to forward it to his correct address. In her letter submitted on motion, assistant district attorney Stotts explains that her office attempted to serve the petitioner a subpoena at his old address, and her investigator attempted to call the petitioner at the phone number he provided and send him the subpoena through e-mail. She claims that the phone number and e-mail address "may or may not have been correct" and according to the petitioner, he never received the phone calls or e-mail message but she "cannot confirm or deny these statements as accurate." Counsel states the petitioner did not receive any calls to his cell phone from the district attorney's office. However, the [REDACTED] Offense Report shows that several messages were also left on the petitioner's work and former home number, and there is no explanation about why he did not receive those messages. In addition, neither counsel nor the petitioner explains why the petitioner did not receive the subpoena through the e-mail he provided.

Counsel also claims that the petitioner assisted in the investigation, and "even if no arrest or charges are brought" or the petitioner "does not testify against the perpetrator," the assistance is valid. There is no requirement that the petitioner 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. Section 101(a)(15)(U)(i)(III) of the Act. Pursuant to the regulations, however, 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 record demonstrates the petitioner's initial cooperation in the detection and investigation of domestic violence, a qualifying crime of which he was the victim. However, after the petitioner reported the assault by his aunt, the district attorney's office required his ongoing cooperation and after several unsuccessful attempts to contact him to appear for the trial, the assistant district attorney had to dismiss the case against his aunt. Accordingly, the preponderance of the evidence submitted below and on motion fails to establish that the petitioner continued to be helpful in the prosecution of qualifying criminal activity. Accordingly, 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's motion does not establish any error in our prior decisions. As stated in the decision to dismiss the petitioner's appeal, the petitioner has not established his ongoing cooperation with the certifying agency. Accordingly, the petitioner is ineligible for U nonimmigrant status under 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 is granted. The appeal remains dismissed and the petition remains denied.