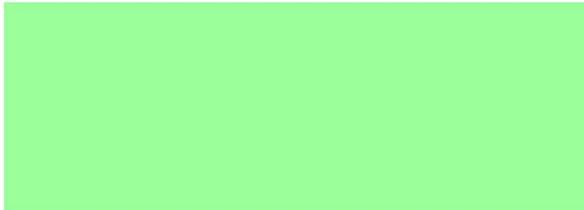


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



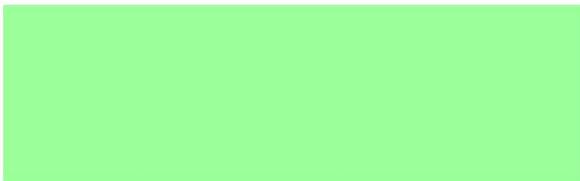
Date: Office: VERMONT SERVICE CENTER FILE:

**APR 18 2014**

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).

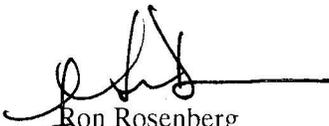
ON BEHALF OF PETITIONER:



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.

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) summarily dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO will be withdrawn and the matter will be remanded to the director for entry of a new decision.

The petitioner seeks nonimmigrant classification pursuant to 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 qualifying criminal activity.

The director denied the petition because the petitioner did not establish that her continuing helpfulness in the investigation or prosecution of qualifying criminal activity. On motion, counsel submits a brief and additional 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).

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.”

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [s]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[es] 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 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 [U.S. Citizenship and Immigration Services (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*

The petitioner is a native and citizen of Honduras who claims to have last entered the United States in November 1994, without inspection, admission or parole. The petitioner filed a Form I-918, Petition for U Nonimmigrant Status (Form I-918 U Petition), on May 19, 2011. On February 22, 2012, the director issued a Request for Evidence (RFE) that the petitioner had been helpful in the investigation or prosecution of qualifying criminal activity and that she had suffered substantial abuse as a result of her victimization.<sup>1</sup> The petitioner responded with additional evidence. The director found the petitioner’s evidence insufficient to establish her helpfulness to the certifying agency and denied the Form I-918 U petition and the Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. The AAO summarily dismissed the petitioner’s subsequent appeal in a

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<sup>1</sup> The director also requested that the petitioner submit a Form I-693 for a health related ground of inadmissibility.

Page 4

decision dated March 18, 2013, incorporated here by reference. The petitioner, through counsel, timely filed the instant motion with the AAO.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). On motion, counsel asserts that the petitioner was helpful to the investigation or prosecution of qualifying criminal activity because she provided testimonial and physical evidence to the police which allowed them to arrest the perpetrator. In support of her claim, counsel submits a brief and additional evidence. As the petitioner has submitted documentary evidence to support her new claim, the motion to reopen will be granted.

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the AAO's prior decision of March 18, 2013 will be withdrawn.

In her declarations, the petitioner recounted that on October 26, 1996, her boyfriend slapped and punched her in the face repeatedly. She asked him to take her to the hospital because she was in extreme pain and he complied. Before they arrived at the hospital, the petitioner's boyfriend demanded that she tell the nurses that she had received the injuries from a fall. Although the petitioner initially told the nurse in the emergency room that she had injured herself through an accidental fall, the nurse did not believe her and summoned the police. After the police had interviewed the petitioner and taken photographs of her injuries, an officer took the petitioner's boyfriend into custody. The petitioner indicated to law enforcement authorities that she didn't want to press charges against her boyfriend. In her statement, the petitioner indicated that her reluctance to press charges was due to fear of her boyfriend's revenge. *See also* [REDACTED] Police Department Initial Report [REDACTED] (indicating that the petitioner did not desire prosecution).

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted was signed by the Supervising Deputy District Attorney [REDACTED] (certifying official) of the San Bernardino County, California, District Attorney's Office. When describing the petitioner's helpfulness to law enforcement authorities, at Part 4.5, the certifying official indicated that the petitioner provided an interview to law enforcement and signed a medical release form, but that she did not desire prosecution against the suspect. The certifying official also noted that it did not appear from the court minutes that the petitioner testified prior to the defendant's entry of a guilty plea. At Parts 4.1-4.4, the certifying official indicated that the petitioner was helpful and that she did not refuse to provide assistance reasonably requested.

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 feared retaliation from the perpetrator, 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.

On motion, counsel asserts that the petitioner was helpful in the investigation or prosecution of the criminal activity because she provided testimonial evidence and signed a medical release at the hospital. Further, counsel contends that in California, the District Attorney decides whether to prosecute a case, not the victim, and there is no evidence that any law enforcement entity tried to contact the petitioner again or issued a subpoena for her to testify.

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 also indicates that she did not refuse to provide ongoing cooperation to law enforcement authorities, as no such requests for assistance were made. Her reasonable decision not to press charges did not impede the prosecution of the criminal case against her boyfriend, who was convicted of a domestic violence crime against her.

A petitioner's statement that she does not want to press charges against her abuser does not, by itself, show that she was not initially helpful to law enforcement authorities and/or refused to provide continuing cooperation in the investigation or prosecution of the crime perpetrated against her. USCIS must look at the totality of the evidence in the record to determine whether a petitioner "has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity . . . and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3).

Although the certifying official stated on the Form I-918 Supplement B that the petitioner did not want to press charges against her boyfriend, the certifying official nevertheless affirmed the petitioner's helpfulness, including that she did not refuse to provide assistance reasonably requested. The evidence of record also supports the certifying official's assertions. According to the record, the petitioner provided details to the interviewing officer at the hospital about the beating from her boyfriend, had her injuries photographed by the interviewing officer, and signed a medical release waiver. The record of the petitioner's interview, the photographs and her medical records were entered into evidence to be reviewed by the district attorney's office for possible prosecution of her boyfriend on a domestic violence charge. The record also indicates that the State of California was able to successfully prosecute the petitioner's boyfriend based upon the evidence that the petitioner provided at the hospital, even without her testifying as a witness. According to the record, the petitioner's boyfriend was convicted of inflicting corporal injury on a spouse/cohabitant in the State of California and sentenced to three years of probation.

While the director stated that "it has been clearly established that [the petitioner] did not wish to pursue prosecution against [her] abuser," the statute and regulations do not impose such a requirement. A petitioner must only establish her helpfulness in the detection, investigation *or* prosecution of the qualifying criminal activity, to include that she didn't refuse or fail to provide information and assistance reasonably requested. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(a)(5), (b)(3). The petitioner's reluctance to press charges against her boyfriend for domestic violence does not negate her assistance in the investigation into her boyfriend's criminal

activity that she provided while at the hospital on the night of the crime, and there is no evidence that law enforcement authorities contacted her after that night for further assistance with their investigation and successful prosecution of the crime. 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, and the director's contrary determination is withdrawn.

*Admissibility*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. A full review of the record in this case establishes that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act (present without being admitted). The director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated September 7, 2012. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the sole ground for denial of the petitioner's Form I-918 U petition has been overcome, we will return the matter to the director for reconsideration of the Form I-192.

*Conclusion*

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 been met.

On motion, the petitioner has overcome the director's ground for denial and has established her statutory eligibility for U nonimmigrant classification. Because the petitioner remains inadmissible to the United States, the matter will be remanded to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on the Form I-918 U petition, which shall be certified to the AAO for review if adverse to the petitioner.

**ORDER:** The March 18, 2013 AAO decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 and 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.