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U.S. Citizenship
and Immigration
Services

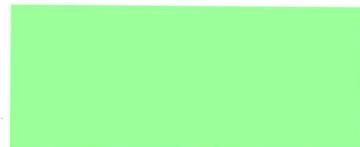


Date: **DEC 04 2014** Office: VERMONT SERVICE CENTER FILE:

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 (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

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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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 failed to establish that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a brief.

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[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

* * *

(3) The alien 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 upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested[.]

* * *

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, 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 initially entered the United States on November 24, 1999 without inspection, admission or parole. In her declarations, the petitioner stated that in 2006, she met the man who perpetrated the domestic violence against her which forms the basis of her Form I-918 U petition. The petitioner recounted that she became

pregnant four months after they met. While she was pregnant, her ex-boyfriend began using drugs and when she tried to get him to stop using drugs, he started abusing her. When she was five months pregnant, her ex-boyfriend threw her to the ground, kicked her in the leg, and grabbed her by the neck and choked her.

On March 6, 2008, the petitioner's ex-boyfriend was up all night using drugs. In the morning, he demanded that the petitioner give him money to buy more drugs and when she refused, he started hitting her and grabbed her by the throat. Their neighbor called the police and the petitioner's ex-boyfriend was arrested for assault. While her ex-boyfriend was in jail, he was removed to Honduras but reentered the United States in September 2008. When he returned to the United States, the petitioner's ex-boyfriend lived with his brother, but the petitioner would allow him to visit their children. On November 2, 2009, the petitioner's ex-boyfriend came to her apartment to see the children and while he was visiting, he stole money from the petitioner's roommate. He left but returned later after he had used drugs all day. The petitioner would not allow him in the apartment but when she tried to escape with the children out the front door, he caught her and began hitting and kicking her while she was holding their one-year-old daughter. The petitioner's neighbor called the police and the petitioner's ex-boyfriend was arrested for assault. On November 10, 2009, the petitioner's ex-boyfriend pled no contest to domestic violence assault in the State of Texas based on his November 2, 2009 arrest, and was ordered to serve 80 days in jail and to have his driver's license suspended.

The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by Chief Prosecutor [REDACTED] County, Texas, Attorney's Office (certifying official) on September 21, 2012. The certifying official indicated that the criminal activity of domestic violence occurred in 2008 and 2009, and that the petitioner was helpful in the investigation of the qualifying domestic violence criminal activity and had not been required to provide further assistance; however, she noted at Part 4.4 that the petitioner had unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. In addition to the Form I-918 Supplement B, the petitioner submitted copies of relevant police reports, and the record of her ex-boyfriend's November 2009 conviction.

Based upon the information in this Form I-918 Supplement B, on October 18, 2013, the director issued a Request for Evidence (RFE) that the petitioner continued to be helpful in the investigation and/or prosecution of qualifying criminal activity. Counsel responded to the RFE with an updated Form I-918 Supplement B from the same certifying official, who on this certification indicated that the petitioner did not unreasonably refuse to assist law enforcement authorities in the investigation or prosecution of criminal activity, but provided no explanation for why her response to Part 4.4 had changed. The certifying official added that the petitioner answered all questions regarding the domestic violence incidents but did not sign the assault victim statements.

The director subsequently denied the petition because "the police reports for the certified crime state that you unreasonably refused to help in the investigation and/or prosecution of the certified crime."

Analysis

We conduct appellate review on a *de novo* basis. Based upon the evidence, we withdraw the director's determination that the petitioner unreasonably refused to provide assistance in the investigation or prosecution of her ex-boyfriend, and find that she has met the helpfulness element of section 101(a)(15)(U)(i)(III) of the Act.

U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity, and requires a victim to demonstrate that since her initial cooperation, she has not refused or failed to provide information or assistance "reasonably requested." 8 C.F.R. § 214.14(b)(3).

The police reports of the domestic violence incidents from 2008 and 2009 demonstrate that the petitioner was initially cooperative with law enforcement authorities in the investigation of the certified criminal activity. According to the police reports when officers arrived on the scene, they interviewed the petitioner, who provided them with the details of the assault against her and her child. Although the reports indicate that the petitioner refused to sign a victim impact statement each time, the director mischaracterized this information as unreasonable refusals to assist law enforcement in the investigation or prosecution of the certified crimes.

In her personal statements, the petitioner explained that she did not sign the statements because she did not want the violence to escalate between her and her abuser once the police left the scene. In addition, the record indicates that the State of Texas was able to successfully prosecute the petitioner's ex-boyfriend based on the evidence that the petitioner provided to the police officers on November 2, 2009. Although the certifying official initially indicated that the petitioner unreasonably refused to provide continued assistance in the investigation or prosecution of the criminal activity, she retracted this statement when signing the second Form I-918 Supplement B, and there is no evidence that after the petitioner's initial cooperation, she was requested to provide further assistance to the certifying agency and refused to cooperate. The police reports also contain no information that the officer(s) who interviewed the petitioner found her refusal to sign the victim impact statements unreasonable or that such refusal would negatively impact an investigation into or prosecution of the 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, and that she did not refuse to provide continued assistance reasonably requested. The director's contrary determination is withdrawn.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement

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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. 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).

In this case, the director determined the petitioner was inadmissible under section 212(a)(6)(A) without analysis and denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated January 29, 2014. On her Form I-918, the petitioner stated that she has no current immigration status in the United States. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

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 as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The director's January 29, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.