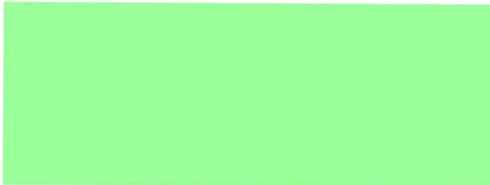
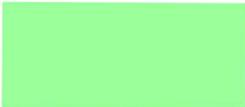


(b)(6)

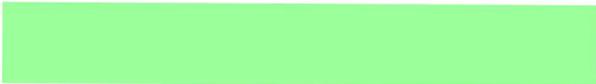


U.S. Citizenship
and Immigration
Services



Date: Office: VERMONT SERVICE CENTER FILE: 

DEC 04 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).

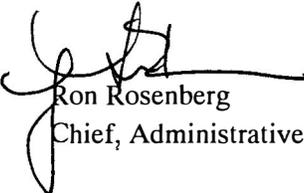
ON BEHALF OF PETITIONER:



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 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 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[.]

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 of Mexico and claims to be a citizen of Guatemala and Mexico. The petitioner claims to have initially entered the United States in May 2000 without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U

Nonimmigrant Status Certification (Form I-918 Supplement B) on March 14, 2012. On April 10, 2013, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation or prosecution of qualifying criminal activity. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-918 U petition and 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.

On appeal, counsel contends that USCIS erred in determining that the petitioner did not establish that she was helpful in the investigation of the cited qualifying criminal activity. Counsel states that the certifying official indicated in the Form I-918 Supplement B that the petitioner was helpful in the investigation of domestic violence, a qualifying crime.

Claimed Criminal Activity

In her declarations, the petitioner recounted that she started dating her ex-husband in 2000, and he began abusing her in 2001. He physically abused her about once a week and threatened to harm her family in Guatemala if she called the police or told anyone about the abuse. On June 28, 2001, the petitioner and her ex-husband went to the store and he started punching her. The store clerk threatened to call the police, so the petitioner's ex-husband grabbed the petitioner and left the store. When they returned home, the petitioner's ex-husband followed the petitioner into the bathroom and locked the door behind them. He began to beat her, and the neighbors saw her through the window and called the police. When the police arrived, they knocked on the bathroom door and the petitioner let them in. The police arrested the petitioner's ex-husband and took pictures of the petitioner's injuries.

The petitioner's ex-husband was released from jail about a week later and returned home. One day, the police called and asked the petitioner how everything was at home. The petitioner's ex-husband threatened to kill the petitioner if she told the police that he was back home. She was never called again by the police or court, and she has not heard from her ex-husband since May 2003 and does not know where he is.

The Form I-918 Supplement B that the petitioner submitted was signed by Deputy Chief [REDACTED] Special Victims Unit, [REDACTED] County, Georgia, Solicitor-General Office (certifying official), on September [REDACTED]. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to the Official Code of Georgia (O.C.G.A.) § 16-5-23 (battery), as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that on June 28, 2001, a police officer indicated that the petitioner had a "bloody nose and bruising around her left eye" and the petitioner "signal[ed] to the officer that [her ex-husband] caused her injuries." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "had a bloody nose and bruising around her left eye."

Analysis

We conduct appellate review on a de novo basis. A full review of the record, including the evidence submitted on appeal, establishes the petitioner's helpfulness to law enforcement in the investigation of the qualifying criminal activity, and the director's decision of November 7, 2013 will be withdrawn.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner 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).

On the law enforcement certification, 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, when the police arrived to the petitioner's home, she "was standing in the bathroom," she "had blood coming from her nose and a bruise starting under her left eye," and she indicated that the injuries "were administered by her husband." The report stated that the petitioner declined medical treatment at the scene but she allowed the police to take pictures of her injuries. The report also indicated that the petitioner had previously made one to five complaints regarding other incidents of domestic violence perpetrated by her ex-husband.

In his denial decision, the director stated that other than the Form I-918 Supplement B, the petitioner did not submit a statement from the certifying official indicating that the petitioner was helpful in the investigation of the qualifying crime. He noted that the Form I-918 Supplement B indicated that the petitioner "did not want to see anything happen in the defendant's criminal case."

De novo review shows that the director mischaracterized the relevant evidence. U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity. A victim must not only demonstrate her cooperation in an investigation or prosecution of qualifying criminal activity, but also establish that "since the initiation of cooperation, [the victim] has not refused or failed to provide information and assistance reasonably requested[.]" See Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. §§ 214.14(b)(3). As noted in the Preamble to the U nonimmigrant rule: "USCIS believes that the statute imposes an ongoing responsibility on the alien victim to provide assistance, *assuming there is an ongoing need for the applicant's assistance.*" *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). (Emphasis added).

The petitioner's statement to the victim's advocate that she did not want to see anything happen to her ex-husband was not a refusal to provide assistance to law enforcement authorities after her initial cooperation. The evidence shows that when the police arrived at the scene, the petitioner identified her ex-husband as her assailant and allowed the police to photograph her injuries, which led to the petitioner's ex-husband's immediate arrest for domestic violence assault and charges filed against him by the prosecutor. The certifying official certified the petitioner's helpfulness on the Form I-918 Supplement B, and there is no evidence that after the petitioner's initial cooperation with the police, the certifying agency required further assistance from her to either continue with its investigation or prosecute the petitioner's ex-husband. The preponderance of the relevant evidence of record demonstrates that the petitioner was helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act. 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 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 sections 212(a)(6)(A)(i) (entry without inspection) and (a)(7)(B)(i) (no valid passport) 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 November 7, 2013. Because the petitioner has overcome the 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 November 7, 2013 decision is withdrawn. The matter is remanded 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 Administrative Appeals Office for review.