



U.S. Citizenship
and Immigration
Services

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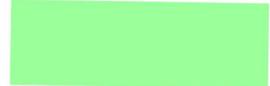


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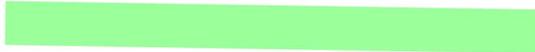
VERMONT SERVICE CENTER

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

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 The director's decision will be withdrawn and the matter returned for issuance of a new decision.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 did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) at the time of filing the nonimmigrant U petition (Form I-918 U petition). On appeal, the petitioner through counsel requests reconsideration of the denial of the petition and submits a letter from the certifying agency and other evidence.

Applicable Law

Section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . ; the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 Mexico who claims to have last entered the United States in 2000 without admission, inspection or parole. The record indicates that prior to that entry, the petitioner sought admission to the United States on January 8, 2000 using identification documents under a different name and identity. The petitioner later admitted to her true identity and was removed from the United States on January 9, 2000 pursuant to an expedited removal order under section 235(b)(1) of the Act. The petitioner filed the instant Form I-918 U petition on September 17, 2012 with a Form I-918 Supplement B in which the certifying official substantially altered the language of the certification at Part 6 of the form. The director issued a Request for Evidence (RFE), notifying the petitioner that any modifications to the Form I-918 Supplement B were unacceptable and requesting a new and properly executed certification. The petitioner timely submitted a new Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit a properly executed Form I-918 Supplement B. The petitioner has timely appealed the denial of the Form I-198 U petition.

Claimed Criminal Activity

The petitioner, in her personal statement, indicated that she was in an abusive relationship with J-O-¹ the father of her two youngest children, since even before her 2000 entry into the United States. She stated that J-O- drank often and was verbally and physically abusive to her and her children. The petitioner described one incident where J-O- came home after drinking and started to abuse her, punching her in the nose. She stated that a neighbor called the police, who arrested J-O-, leading to his eventual deportation from the United States. The record also contains police reports relating to two separate incidents involving the petitioner and J-O- on February 12, 2002 and on November 7, 2005 respectively. The police report for the 2002 incident reveals that the petitioner was the victim of domestic violence (battery) by J-O-, who yelled at her, pulled her hair, and struck her in the nose with his fist, causing her nose to bleed and her to fall on the ground. The report indicates that the petitioner's roommate heard the disturbance and called the police. The police report for the 2005 incident indicates that on that occasion, the petitioner called the police against

¹ Name withheld to protect the individual's identity.

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J-O-. The petitioner told the police that the perpetrator slapped her in the face in that incident and that he often hit the children with belts when intoxicated. According to the report, the petitioner requested that the police advise J-O- “to not hit her or the children.”

The petitioner submitted two Forms I-918 Supplement B signed by the same certifying official, [REDACTED] Attorney’s Office, [REDACTED] Wisconsin. Both of these certifications indicate that the petitioner was the victim of domestic violence, that she possessed information about the criminal activity committed against her, that she was helpful in the investigation or prosecution of the criminal activity of which she was a victim, and that the domestic violence occurred in the United States. However, the director found that these certifications were not properly executed and, therefore, the petitioner did not submit required initial evidence, because the certifying official modified Part 6 of each certification, crossing out language that she is certifying the information on the Form I-918 Supplement B under penalty of perjury.

Analysis

We review these proceedings *de novo*. Upon review, we withdraw the director’s decision to deny the petition on the stated grounds.

Section 214(p)(1) of the Act and the corresponding regulation at 8 C.F.R. § 214.14(c)(2)(i) require a certifying official to “state” or affirm certain information relating to the eligibility criteria at section 101(a)(15)(U)(i) of the Act. *See U Nonimmigrant Rule*, 72 Fed. Register 53014, 53023 (Sept. 17, 2007) (“the certifying official must affirm the following in the certification”)

Here, the certifying official affirmed that the petitioner was a victim of the qualifying criminal activity of domestic violence, that she possessed information concerning the qualifying criminal activity of which she was a victim, that she was helpful to the investigation or prosecution of the qualifying criminal activity, and that the qualifying criminal activity violated U.S. law. The certifying official, however, declined to sign the Form I-918 Supplement B under penalty of perjury and, therefore crossed out certain language at Part 6 because, as she stated in an electronic mail message to the petitioner’s counsel, she “cannot state under oath that [the petitioner] was a victim in the case.” The certifying official did, nevertheless, state in the same electronic message that “all information in the [police] report indicates [the petitioner] was a victim in the case, but I have no personal knowledge of the incident”

Despite her reluctance to sign under penalty of perjury, the certifying official affirmed through her signatures and dates on the Forms I-918 Supplement B, as well as her clarifying email message, that records of the certifying agency indicate that the petitioner was the victim of a domestic violence crime, that the petitioner possessed information about the crime of which she was a victim and subsequently assisted in the investigation or prosecution of the criminal activity committed against her, and that the criminal activity violated a particular section of Wisconsin’s criminal statute. Accordingly, the petitioner submitted as

required initial evidence the law enforcement certification described at section 214(p)(1) of the Act, as explicated at 8 C.F.R. § 214.14(c)(2)(i), and we withdraw the director's determination to the contrary.²

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. 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in order to waive a ground of inadmissibility. Here, the petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for such waiver because her underlying Form I-918 U petition had been denied. 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 grounds for denial of the petitioner's Form I-918 U petition have 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 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 decision of the Vermont Service Center 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.

² The evidence in the record establishes all statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act, including that the petitioner suffered substantial abuse as the result of the commission of the qualifying criminal activity against her. See section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1).