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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



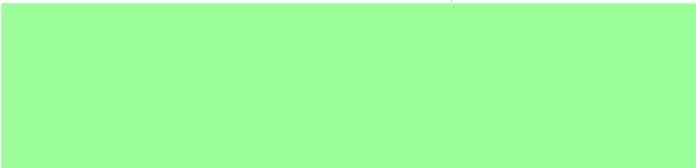
Date: Office: VERMONT SERVICE CENTER FILE: 

DEC 31 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. 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 Acting 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 appeal will be dismissed and the petition will remain denied.

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 he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner 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 Mexico who claims to have initially entered the United States on December 20, 2008 without inspection, admission or parole. In his declaration, the petitioner recounted that when he started dating his ex-boyfriend in 2000, they had a good relationship.

However, his ex-boyfriend had a drinking problem and when he was drunk, he became jealous and abusive. The petitioner's ex-boyfriend called the petitioner names regarding his HIV status, which made him feel "worthless." He also forced the petitioner to have sex with him, and the petitioner was afraid of him.

On February [REDACTED], the petitioner and his ex-boyfriend went to a nightclub, and while at the club, the petitioner's ex-boyfriend became jealous when a man touched the petitioner. His ex-boyfriend started "screaming at [him] and insulting [him] in front of everybody," and when they got home, his ex-boyfriend continued yelling at him and threatened him with a knife. The petitioner called 911 and while on the phone, his ex-boyfriend took the phone away from him. The petitioner's ex-boyfriend then began punching the petitioner on his face and body, threw him to the ground, and bit his ear. When police officers arrived, the petitioner told them what had happened, answered their questions, and allowed them to take pictures of his injuries. The police officers arrested the petitioner's ex-boyfriend.

The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by Lieutenant [REDACTED] California, Police Department (certifying official), on February [REDACTED]. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 273.5 (cohabitant abuse), 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, he indicated that the petitioner and suspect were dating for a year and living together for six months, and that the petitioner and "suspect were intoxicated and engaged in a verbal dispute, prior to the physical confrontation escalating between the two." 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 visible injuries to his knuckles, left ear, right shinbone, and right forearm." The certifying official indicated that the petitioner had not unreasonably refused to provide assistance; however, he noted at Part 4.2, that the petitioner was not helpful in the investigation of the qualifying domestic violence criminal activity. In addition to the Form I-918 Supplement B, the petitioner submitted copies of the relevant police report.

Based upon the information in this Form I-918 Supplement B, on April 9, 2013, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation and/or prosecution of qualifying criminal activity. Counsel responded to the RFE with an additional statement and copies of documents already included in the record, which the director found insufficient to establish the petitioner's eligibility. The director subsequently denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).

#### *Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition. To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that he 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 his 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 not helpful in the investigation of the qualifying domestic violence criminal activity. In his denial decision, the director stated that because the certifying official indicated in the Form I-918 Supplement B that the “detectives were never able to speak to victims,” he requested an additional statement from the certifying official indicating that the petitioner was helpful in the investigation of the qualifying crime. However, the petitioner did not provide the requested letter from the certifying official.

Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . 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).” Although on appeal, the petitioner asserts that the certifying official did not indicate that he had unreasonably refused to provide assistance, the petitioner does not acknowledge that the certifying official did indicate that the petitioner was not helpful in the investigation of the qualifying criminal activity. Therefore, the certifying official did not endorse the petitioner’s helpfulness such that he is able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. The petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act and, therefore, 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*

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 appeal is dismissed. The petition remains denied.