



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: FEB 27 2014 Office: VERMONT SERVICE CENTER [Redacted]

IN RE: PETITIONER: [Redacted]

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:
[Redacted]

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 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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and she did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, counsel submits a statement, a statement from the petitioner, additional evidence, and documents already included in the record. Counsel also indicates that a brief or other evidence will be submitted within 30 days. As of the date of this decision, the AAO has received no additional statements or evidence.

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;

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . domestic violence; sexual assault; abusive sexual contact; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(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. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, 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 person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant 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 El Salvador who entered the United States on December 1, 1993 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on March 26, 2012 with an accompanying incomplete Form I-918 Supplement B that was not signed or dated by a person recognized as a certifying official. The director subsequently denied the Form I-918 U petition because the petitioner failed to submit a properly executed Form I-918 Supplement B, and she did not meet any of the eligibility criteria for U nonimmigrant classification. The director also noted that the petitioner failed to

submit a statement describing her victimization or a copy of her passport. The petitioner appealed the denial of the Form I-198 U petition.

On appeal, counsel claims that a Form I-918 Supplement B, signed by a [REDACTED] official, was filed with the initial Form I-918 U petition, and a second Form I-918 Supplement B, signed by a [REDACTED] official, was filed later. Counsel submits a copy of the first page of the second Form I-918 Supplement B, and an August 14, 2012 letter from a legal assistant in the [REDACTED] stating her office approved the petitioner's request for the Form I-918 Supplement B. In addition, counsel submits a copy of a Form I-918 Supplement B signed by [REDACTED] dated December 22, 2012.

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, we find no error in the director's decision to deny the petition based upon lack of required initial evidence.

The petitioner filed her Form I-918 U petition on March 26, 2012 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). Counsel claims that the Form I-918 U petition was filed with the Form I-918 Supplement B from the [REDACTED]. The record does not show that a completed and signed Form I-918 Supplement B was filed with the Form I-918 U petition. Moreover, although on appeal the petitioner submitted a Form I-918 Supplement B from the [REDACTED] it was not submitted as initial evidence with her Form I-918 U petition. According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), "[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . .". In addition, this Form I-918 Supplement B, dated December 22, 2012, was not signed by the certifying official within the six months preceding the March 26, 2012 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). As the petitioner failed to submit all required initial evidence with her Form I-918 U petition, her Form I-918 U petition must remain denied. *See* 8 C.F.R. § 214.14(c)(2)(i).

Further, the letter from the legal assistant in the [REDACTED] may not be accepted in lieu of the law enforcement certification required by the statute at section 214(p)(1) of the Act. We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. As the petitioner has failed to provide a Form I-918 Supplement B that conforms to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), she has failed to establish her eligibility for U nonimmigrant classification. Furthermore, even if the petitioner had filed a properly executed Form I-918 Supplement B, she is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

Claimed Criminal Activity

In her statement, the petitioner recounted that as a child she was abused and placed into foster care when she was 11 years old.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] (certifying official), dated December 22, 2012.¹ The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence and sexual assault. In Part 3.3, the certifying official refers to Revised Code of Washington (R.C.W.) § 9A.44.083, child molestation in the first degree, 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 was the “victim of her step-father fondling her breasts on multiple occasions.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official left it blank.

Child Molestation under Washington Law is Substantially Similar to a Qualifying Crime or Criminal Activity

The certifying official at Part 3.3 in the Form I-918 Supplement B indicates that he investigated or prosecuted the crime of child molestation. The crime of child molestation is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the child molestation offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under the Revised Code of Washington, “[a] person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.” Wash. Rev. Code Ann. § 9A.44.083 (West 2013).

On appeal, counsel claims that the petitioner was a victim of domestic violence, abusive sexual conduct, incest, and sexual assault. The elements of child molestation under section 9A.44.083 of the Revised Code of Washington are substantially similar to abusive sexual contact, which is a qualifying crime under section 101(a)(15)(U)(iii) of the Act. The record shows that when the petitioner was a minor, she was fondled by her stepfather on multiple occasions and was removed from her mother’s custody because of the sexual abuse. The regulation at 8 C.F.R. § 214.14(a)(14) defines victim of qualifying criminal activity as an alien who is directly and proximately harmed by qualifying criminal activity. Here, the petitioner was the victim

¹ The record also contains the first page of another Form I-918 Supplement B from the [REDACTED] which lists the criminal activity as abusive sexual contact.

of abusive sexual contact, and the relevant evidence shows that she was directly and proximately harmed by the qualifying crime. Accordingly, she has established the requisite victimization.

Substantial Physical or Mental Abuse

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

Counsel claims that the petitioner is still suffering the "the lingering effects of the abuse." The petitioner states that she had to attend counseling and anger management, she has difficulty trusting people, and she is overprotective of her daughter. In her letter dated July 10, 1996, therapist [REDACTED] indicated that it was "very painful and difficult" for the petitioner to discuss her sexual abuse but she was engaged "in the treatment process." While [REDACTED] indicated that the petitioner was receiving treatment, she did not provide a specific diagnosis of any mental health condition from which the petitioner may have suffered. Moreover, the letter from [REDACTED] is over 17 years old and there are no updated mental health documents in the record. Although the petitioner states that she is still suffering from the abuse, she does not probatively discuss any permanent or serious harm the incident caused to her appearance, health, or physical or mental soundness. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that she suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, she has also failed to establish that she possesses information concerning such activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. *See also* section 214(p)(1) of the Act. In addition, the certifying official indicated that since the crime occurred in Seattle, the report was sent to the [REDACTED] and at Part 4.5, he noted that it was "unknown if [the petitioner] cooperated with" them.

Jurisdiction

As the petitioner did not submit a Form I-918 Supplement B as initial evidence, she has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

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, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), in order to waive a ground of inadmissibility. The director noted in his decision that the petitioner did not provide evidence of a valid passport or border crossing card. The petitioner still has not provided a copy of a valid passport or border crossing card, and therefore, she is inadmissible under section 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act. Furthermore, the record shows the petitioner entered the United States without admission, inspection or parole, so she is also inadmissible under section 212(a)(6)(A)(i) (present without being admitted) of the Act.

Conclusion

The petitioner has not complied with the regulation at 8 C.F.R. ^ 214.14(c)(2)(i) regarding the submission of required initial evidence. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied. In addition, the petitioner has not established that she suffered substantial physical or mental abuse as a result of her victimization, that she possesses information concerning qualifying criminal activity, that she has been helpful to law enforcement authorities, or that the criminal activity violated the laws of the United States or occurred in the United States. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a new Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. ^ 214.14(c)(2)(i).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.