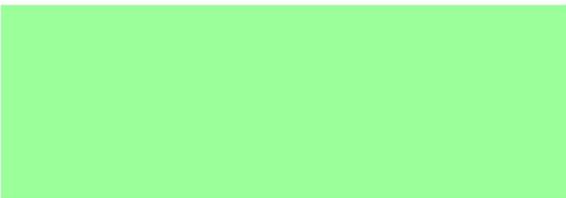




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **NOV 24 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. 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 petition for the petitioner's failure to establish her helpfulness to law enforcement authorities in the investigation or prosecution on qualifying criminal activity. On appeal, counsel for the petitioner submits a brief.

*Applicable Law*

Section 101(a)(15)(U) of the Act provides 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; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 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).

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[.]

\* \* \*

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, is being, or is likely to be helpful to an investigation or prosecution of that qualifying 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. The record indicates that she last entered the United States in December 2003 without admission, inspection or parole. On December 16, 2003, the petitioner

was placed into removal proceedings. On April 1, 2004, an immigration judge issued an *in absentia* order of removal against the petitioner. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on July 9, 2012. On August 23, 2013, the director issued a Request for Evidence (RFE), including, among other things, a letter from the certifying official regarding the petitioner's helpfulness in the investigation or prosecution of the criminal activity. The petitioner responded to the RFE by submitting a statement from the certifying official and other evidence. The director found the petitioner's response insufficient to establish the petitioner's eligibility and denied the petition accordingly on February 11, 2014, concluding that the petitioner had not established that she was, is being, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity as required under section 101(a)(15)(U)(i)(III) of the Act. The petitioner has appealed the denial of the Form I-918 U petition.

### *Qualifying Criminal Activity*

The petitioner, in her personal statement, described the criminal activity committed against her by the perpetrator, which the Form I-918 Supplement B indicates occurred on [REDACTED]. The petitioner indicated that the perpetrator, F-G-<sup>1</sup> arrived at her home and pushed her hard when she opened the door for him. Following her upstairs, he called her derogatory names, pulled her hair, and hit her in the face with a closed fist. F-G- then threw a pair of scissors at her, which hit the wall. The petitioner threatened to call the police when F-G- refused to leave. By the time the petitioner called the police, F-G- had left the house but was outside throwing sticks at the windows. When the police arrived, F-G- was asleep on the porch but woke up and started threatening the petitioner. F-G- is now in Mexico, but the petitioner stated that he continues to threaten her because of what happened to him.

The Form I-918 Supplement B that the petitioner submitted was signed on May 15, 2012 by [REDACTED], Deputy Chief, Special Victims Unit, [REDACTED], Georgia (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of domestic violence and in Part 3.3, listed the corresponding Georgia criminal statutes for the offenses of simple battery and simple assault as the offenses that were investigated and prosecuted. At Part 4, while the certifying official noted that the petitioner possessed information about the cited criminal activities and was requested to provide assistance in the investigation and prosecution of the cited criminal activities, Ms. [REDACTED] also indicated "no" to the question at Part 4.2 inquiring as to whether the petitioner has been, is being or is likely to be helpful in such investigation and/or prosecution. In Part 4.5, the certifying official specifically noted that the petitioner did not assist with the investigation, requested dismissal of the charges, and denied that F-G- had attacked her. The certifying official also stated that although the petitioner called the police, it was another individual who reported that F-G- slapped and threatened to kill the petitioner. According to the certifying official, F-G- eventually pled guilty to disorderly conduct, while the charges of simple assault and simple battery were dismissed.

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<sup>1</sup> Name withheld to protect individual's identity. F-G- was the petitioner's boyfriend at the time of the incident.

*Analysis*

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Section 214(p)(1) of the Act requires a Form I-918 U petition to be accompanied by a certification from a certifying official that states that the petitioner "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). Here, the certifying official did not certify the petitioner's helpfulness in the investigation or prosecution of the criminal activity at Part 4.2 of the Form I-918 Supplement B and, therefore, she has not submitted a law enforcement certification described at section 214(p)(1) of the Act.

We acknowledge the narrative at Part 4.5 of the Form I-918 Supplement B and the certifying official's letter submitted in response to the RFE that the petitioner seemed leery of the legal system and appeared to minimize the incident when speaking with the victim advocate. Although the petitioner's hesitation to testify against F-G- is understandable given their relationship, she must nevertheless demonstrate her cooperation in the detection, investigation or prosecution of the qualifying criminal activity. According to the evidence, the petitioner called the police but then stated that F-G- did not attack her, and it was another individual who provided information to the police about the altercation between the petitioner and F-G-.

On appeal counsel asserts that there is no evidence that the petitioner refused or failed to provide information or assistance requested by the certifying agency, and that she expressed her willingness to go to court, if necessary, and F-G- was successfully prosecuted for simple battery.<sup>2</sup> The evidence, however, does not sufficiently demonstrate the petitioner's helpfulness to the certifying agency and the certifying official has declined to certify the petitioner's helpfulness. We lack the authority to waive the statutorily required certification described at section 214(p)(1) of the Act. Accordingly, the petitioner has failed to demonstrate that she satisfied the helpfulness requirement for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act.

*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.

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<sup>2</sup> According to the Form I-918 Supplement B, the original charges of simple battery and simple assault against the perpetrator were dismissed and F-G- pled guilty to disorderly conduct.