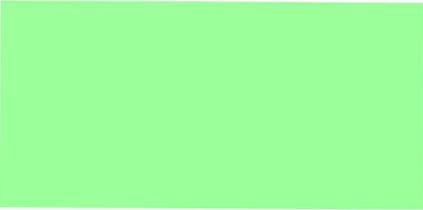




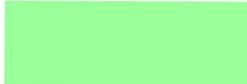
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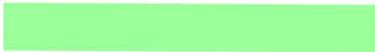


Date: **NOV 24 2014**

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:

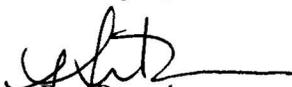


INSTRUCTIONS:

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.

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 the victim of qualifying criminal activity. On appeal, counsel 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; . . . murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

\* \* \*

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. . . ;
- (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. . . ;
- (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, 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 Guatemala who claims to have last entered the United States in December 2009 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant

Status Certification (Form I-918 Supplement B), on January 20, 2012. On December 20, 2012, the director issued a Request for Evidence (RFE), requesting, among other things, evidence that the petitioner suffered direct and proximate harm, as well as substantial physical or mental abuse, as a result of the commission of qualifying criminal activity. The petitioner responded to the RFE with a statement from the petitioner's mother-in-law, a psychological report by [REDACTED] an incomplete psychological evaluation prepared by [REDACTED] Psy.D, a copy of a letter from the district attorney referencing a protective order issued against the perpetrator in favor of the petitioner, amendments correcting errors on the Form I-918 U petition, and reference letters. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on November 1, 2013, concluding that the petitioner had not established that she was a victim of qualifying criminal activity and, therefore, was unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner has appealed the denial of the Form I-918 U petition. On appeal, counsel submits a brief statement, asserting that the petitioner is a victim of and suffered direct and proximate harm as a result of the commission of the qualifying criminal activity of felonious assault.

*Claimed Criminal Activity*

The petitioner, in her personal statements, indicated that on the night of September 5, 2009, she woke up to hear a woman screaming. When she went to the living room, she saw her brother-in-law's ex-girlfriend, D-D-<sup>1</sup> who was outside with two other females, break a window in the house. The petitioner's mother-in-law called the police. The three females were screaming outside, demanding the petitioner's brother-in-law, E-M-, to come outside. When he did, the females pulled him by the hair and started beating him and threatening to kill him. The petitioner then witnessed three men come up and start beating and kicking E-M-. The petitioner's mother-in-law attempted to break up the attack by pulling the men by their shirts. One of the men pulled out a knife and started stabbing E-M-. The petitioner screamed and cried to make the attackers stop but they did not. All the attackers left the scene when they heard police sirens, except for D-D-, who continued to shout profanities at E-M-. When the petitioner told her to stop, D-D- threatened her and called two of the male attackers back to attack the petitioner. Neighbors yelled for D-D- to stop because the petitioner was pregnant. However, D-D- continued towards the petitioner who grabbed D-D-'s hands in self-defense. The petitioner saw two of the male attackers coming towards her, one of them with a knife. However, the men left when they heard the sirens. D-D- told the petitioner that she was going to kill the petitioner. The police arrived and the petitioner cooperated with the investigation and testified against D-D- and the other perpetrators in court. The petitioner's brother-in-law was badly injured but survived the attack.

The Form I-918 Supplement B that the petitioner submitted was signed on July 21, 2011 by [REDACTED] Detective Sergeant, Family Violence, [REDACTED] Police Department, [REDACTED] California (certifying official). In Part 3.1, which inquires about the criminal activity of which the petitioner was a victim, the certifying official checked the boxes for domestic violence, murder, and attempt to commit any of the named crimes. In Part 3.3, the certifying official cited sections 664/187 and 422 of the California Penal

<sup>1</sup> Name withheld to protect individual's identity.

Code (CPC), which relate to the offenses of attempted murder and criminal threats, as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner attempted to break up the attack against her brother-in-law and was assaulted and threatened with death. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the official stated that the petitioner suffered both emotionally and psychologically from witnessing the assault against her brother-in-law. In Part 4.5 of the form, the certifying official stated that the petitioner witnessed the assault and was herself also a victim of the assault, and further noted that the petitioner was an essential witness to the case, whose cooperation led to the arrest and conviction of the perpetrators.

### *Analysis*

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the director's decision to deny the petition on the stated grounds.

The petitioner has established that she is a victim of qualifying criminal activity. Pursuant to the regulation at 8 C.F.R. § 214.14(a), a "victim of qualifying criminal activity" is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. The certifying official indicated that the petitioner was present and witnessed the petitioner's brother-in-law being attacked and assaulted by three women, including his former girlfriend, D-D-, and that the petitioner was also a victim of assault and a criminal threat. Thereafter, she saw three men arrive on the scene and witnessed them beating, kicking, and ultimately stabbing her brother-in-law. The petitioner, who was pregnant at the time of the attack, intervened with her mother-in-law to break up the attack and was herself threatened with death and assaulted. The written statement of the petitioner's mother-in-law, who was also present during the attack, indicates that the petitioner was threatened by D-D- and that the three male perpetrators tried to strike the petitioner when the latter attempted to stop D-D- from hitting her injured brother-in-law. The petitioner's mother-in-law further stated that D-D- threatened to kill her family one by one.

The certifying official indicated on the Form I-918 Supplement B that the petitioner was both emotionally and psychologically harmed as a result of witnessing the assault by several perpetrators against her brother-in-law, who sustained multiple stab wounds. The petitioner described her brother-in-law's injuries as serious and indicated that she believed him to be dying at the time, as he nearly lost consciousness and appeared to have lost a lot of blood. Based on the record, we find that the petitioner has sufficiently demonstrated that she was directly and proximately harmed as a result of the commission of the qualifying crime, and therefore, has established that she is a victim qualifying criminal activity. Accordingly, we withdraw the director's contrary determination.<sup>2</sup>

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<sup>2</sup> The evidence in the record also establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. The certifying official provided on the Form I-918 Supplement B that the petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States. Our review of the record

*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 denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition, without noting her ground(s) of inadmissibility. *See Decision of the Director Denying Petitioner's Form I-192*, dated November 1, 2013. Section 212(a)(6)(A)(i) of the Act renders inadmissible any alien present in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). The petitioner stated on her Form I-918 U petition that she last entered the United States in December 2009 without inspection, admission or parole. The petitioner was also present in the United States in September 2009 when the qualifying criminal activity occurred, but the record does not show how long the petitioner had been in the United States as of September 2009. At a minimum, the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act based upon her last entry without inspection. On her Form I-918, the petitioner stated that she has no current immigration status in the United States.

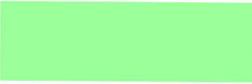
The director did not assess the petitioner's inadmissibility and denied her waiver request based solely on the denial of her Form I-918 U petition. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form 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

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further reveals that the petitioner suffered substantial abuse as the result of her involvement in the qualifying criminal activity.



*NON-PRECEDENT DECISION*

Page 7

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 November 1, 2013 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.