



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 10 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 The director's decision will be withdrawn and the matter returned for entry of a new decision.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.

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[.]

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[.]

* * *

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

* * *

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) 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
- (ii) A Federal, State, or local judge.

* * *

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.

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 El Salvador who claims to have last entered the United States in June 1997 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 Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on June 21, 2012. On July 31, 2013, the director issued a Request for Evidence (RFE), including, among other things, evidence that the petitioner reported the qualifying crime to a law enforcement agency; that the petitioner possessed information about the qualifying crime; and of the petitioner's helpfulness to a law enforcement agency in the investigation and prosecution of the qualifying criminal activity. The petitioner responded to the RFE by submitting a statement from her counsel. The director found the petitioner's response insufficient to establish the petitioner's eligibility and denied the petition accordingly on January 6, 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) of the Act because the petitioner did not report the criminal activity to a law enforcement agency to allow an investigation of the perpetrator to move forward. The petitioner appealed the denial of the Form I-918 U petition. On appeal, counsel submits a brief.

Qualifying Criminal Activity

The petitioner, in her personal statement, indicated that she had been in an ongoing abusive relationship with her husband, J-D-A-¹. The petitioner stated that during their marriage, her husband beat her physically approximately three times a week and forced her to have sexual relations with him. She described incidents where J-D-A- pushed her, punched her in the chest and pulled her by her hair, and hit her in the head with a closed fist. In 2008, the [REDACTED] became involved when the petitioner sought a restraining order against her husband.

¹ Name withheld to protect individual's identity.

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The Form I-918 Supplement B that the petitioner submitted was signed on March 5, 2012 by [REDACTED] Social Worker, [REDACTED] Massachusetts. Ms. [REDACTED] identified herself as the certifying official and Commissioner [REDACTED] as the head of the certifying agency. Ms. [REDACTED] executed the Form I-918 Supplement B to indicate that the petitioner: was the victim of a qualifying crime (domestic violence); was helpful to the investigation or prosecution of the qualifying crime; and possessed information about the qualifying criminal activity.

Analysis

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we withdraw the director's decision to deny the petition based on the stated grounds.

Although the director concluded that [REDACTED] was a certifying agency he found that the petitioner failed to establish the helpfulness requirement at section 101(a)(15)(U)(i)(III) of the Act because the petitioner had not separately reported the criminal activity to a law enforcement agency. However, the director's requirement that the petitioner report qualifying criminal activity to both a certifying agency and a separate law enforcement entity is not supported by the language of either the statute or the regulations and, therefore, must be withdrawn.

Section 101(a)(15)(U)(i)(III) of the Act requires the petitioner to demonstrate that he or she "has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official . . . or other Federal, State, or local authorities investigating or prosecuting criminal activity . . ." (Emphasis added). The regulation at 8 C.F.R. § 214.14(b)(3) further clarifies that the petitioner must demonstrate her helpfulness to a "certifying agency," a term that is defined at 8 C.F.R. § 214.14(a)(2). Here, [REDACTED] which is a Massachusetts State authority with criminal investigative jurisdiction, is both "a State . . . authority investigating . . . criminal activity . . ." and a *certifying agency* at 8 C.F.R. § 214.14(a)(2)("[a]n agenc[y] that ha[s] criminal investigative jurisdiction in [its] respective areas of expertise, including, but not limited to, child protective services. . ."). Accordingly, we withdraw the director's decision, as the petitioner has demonstrated that she satisfied the helpfulness requirement for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act.

Despite our withdrawal of the director's decision, the petition may not be approved as the record is presently constituted.²

According to the regulation at 8 C.F.R. § 214.14(a)(3)(i) a *certifying official* is either 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." As indicated on the Form I-918 Supplement B, the head of the certifying agency is Commissioner [REDACTED] Commissioner [REDACTED] however, is not the certifying official of the instant Form I-918 Supplement B;

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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the certifying official is [REDACTED] who lists her title as "Social Worker." Based upon her title alone, Ms. [REDACTED] does not appear to work for [REDACTED] in a supervisory role. More importantly, the record contains no evidence that Commissioner [REDACTED] has specifically designated Ms. [REDACTED] to issue a Form I-918 Supplement on behalf of [REDACTED]. Consequently, the Form I-918 Supplement B fails to comply with the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i), regarding required initial evidence.

In the July 31, 2013 RFE, the director requested evidence that Ms. [REDACTED] met the definition of *certifying official*; however, the petitioner's response failed to address this issue. As we are withdrawing the director's stated basis for denial of the petition, we return the matter to the director to address this issue further and enter a new decision into the record.

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).

ORDER: The director's decision is withdrawn and the matter is remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.