



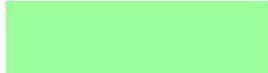
U.S. Citizenship
and Immigration
Services

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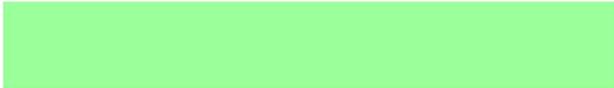


Date: **OCT 14 2014**

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 appeal will be granted and the matter will be remanded to the director for further action and issuance 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; . . . stalking; . . . 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:

* * *

(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.

* * *

(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.

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 Mexico who claims to have entered the United States in 1996 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 February 10, 2012. On February 21, 2013, the director issued a Request for Evidence (RFE), including, among other things, a personal statement from the petitioner, a statement from the certifying official and supporting evidence indicating that the petitioner possesses information relating to the criminal activity, and evidence that the petitioner was a victim of qualifying criminal activity. The petitioner responded to the RFE with an updated statement, an emergency protective order issued May 21, 2009 in favor of the petitioner and other family members, and a copy of a previously submitted a psychological evaluation by [REDACTED] dated November 7, 2011. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on July 19, 2013, concluding that the petitioner had not established that he was the

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 appealed the denial of the Form I-918 U petition. On appeal, counsel submits a brief statement and background materials, asserting that the crimes of stalking, harassment and criminal threats are included or part of a crime of domestic violence.

Claimed Criminal Activity

The petitioner, in his personal statement, indicated that he, his mother, and his other family members were victims of stalking, threats, and harassment by his mother's former boyfriend, J-J-¹ beginning in April 2009. He stated that J-J- texted and called the petitioner's mother, making threats against her, the petitioner, and his father and siblings. J-J- also started stalking them. The petitioner became scared for his life. The petitioner stated that he and his family reported the situation to the police on May 16, 2009, and his mother filed several other police reports. Eventually, J-J- was arrested and charged with Stalking in violation of section 646.9(a) of the California Penal Code (CPC) and Criminal Threats under CPC § 422. He was convicted on December 4, 2009 of stalking.

The Form I-918 Supplement B that the petitioner submitted was signed on August 10, 2011 by Officer [REDACTED] Los Angeles Police Department, Los Angeles, California (certifying official). The certifying official did not identify his or her full name and did not list the name of the head of the certifying agency in Part 2 of the Form I-918 Supplement B. In Part 3.1, which inquires about the criminal activity of which the petitioner was a victim, the certifying official checked the box for domestic violence. In Part 3.3, the certifying official cited sections 422 and 646.9(a) of the California Penal Code (CPC), which relate to the offenses of criminal threats and stalking, 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 victim's mother was stalked and threatened by her ex-boyfriend, who also threatened the petitioner, his sister, and his father. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, it indicates that the petitioner suffered mental and emotional stress due to the perpetrator's threats to kill the petitioner and his family. In Part 4.5 of the form, the certifying official stated that the petitioner and his mother reported the incidents and helped convict the perpetrator.

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 on the stated grounds.

The Form I-918 Supplement B at Part 3.3 listed the statutes for criminal threats and stalking under CPC §§ 422 and 646.9(a) as the relevant statutes for the criminal activities that were investigated or prosecuted. Stalking, which was added by the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4 (March 7, 2013), is a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

¹ Name withheld to protect individual's identity.

Upon review of the record, we find that the petitioner demonstrated that he suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The certifying official indicated that the petitioner, along with his mother, reported incidents of stalking and helped convict the perpetrator. The record includes statements made by the petitioner's mother to the police detailing the incidents of stalking and threats made to her against her family and her. An application for an emergency protective order by Officer [REDACTED] dated May 21, 2009, identifies the petitioner, his mother and other family members as the individuals to be protected by the order against the perpetrator and indicates that the perpetrator threatened to kill the petitioner, as well as his family members. A follow up application for a temporary restraining order by the petitioner's mother, dated May 28, 2009, also states that the perpetrator made threats to harm the petitioner's mother and her family, including the petitioner. Accordingly, the record demonstrates that the petitioner was a victim qualifying criminal activity, and we withdraw the director's determination on this issue. Despite our withdrawal of the director's decision, however, 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 written as "LAPD [Los Angeles, California Police Department]." However, the Chief of the LAPD is not the certifying official of the instant Form I-918 Supplement B; the certifying official is "Officer [REDACTED]" who lists his title as "LAPD." Based upon his title alone, Officer [REDACTED] does not appear to work for the LAPD in a supervisory role. More importantly, the record contains no evidence that Officer [REDACTED] has been specifically designated to issue a Form I-918 Supplement on behalf of the LAPD. 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 February 21, 2013 RFE, the director did not request evidence regarding Officer [REDACTED] authority as a *certifying official*. 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 remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.

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).