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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

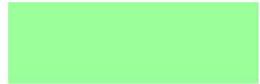


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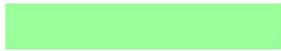
Office: VERMONT SERVICE CENTER

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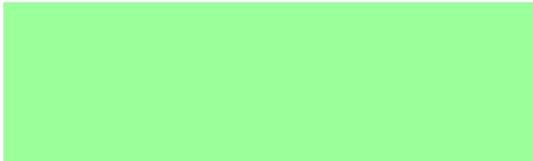
PETITIONER:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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.

*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 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).

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. . . .;

\* \* \*

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 France who claims to have last entered the United States on December 6, 1999 on a nonimmigrant visitor's visa. 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 5, 2012. On January 28, 2013, the director issued a Request for Evidence (RFE), including, among other things, a statement from the certifying official regarding the petitioner's helpfulness and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The petitioner responded to the RFE with additional evidence, including an updated personal statement, a copy of her French national identification card, and other records. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on August 16, 2013, 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 appealed the denial of the Form I-918 U petition. On appeal, counsel submits a brief and additional evidence, including an updated Form I-918 Supplement B signed by the same certifying official, a new Form I-192, and another statement from the petitioner.

#### *Claimed Criminal Activity*

The petitioner, in her personal statement, indicated that she had been in an abusive relationship with the father of her three children, M-M-<sup>1</sup>. In 2009, M-M- came home unexpectedly, smelling of alcohol. The petitioner stated that M-M- was angry that there was no food prepared for him to eat and started talking against and threatening the petitioner's sister who was also there. She recounted how when she told him to not threaten her sister, M-M- punched the petitioner, who fell to the ground. The petitioner then called the police when M-M- did not leave as she requested.

The Form I-918 Supplement B that the petitioner submitted below was signed on September 14, 2011 by [REDACTED] Deputy Chief, Special Victims Unit, [REDACTED] (certifying official). In Part 3.1 of the Form I-918 Supplement B, 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 16-5-20, 16-5-23, and 16-11-39 of the Georgia Code Annotated (G.C.A.), which relate to the offenses of Simple Assault, Simple Battery, and Disorderly Conduct, 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 perpetrator "slapped victim on the right side of her head which caused her to fall to the floor." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, it indicates that no injuries were documented in the police report. The certifying official indicated in Part 4.4 that the petitioner has not unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the qualifying crime. In Part 4.5, inquiring about additional information relating to the victim's helpfulness, the certifying official stated that the victim's written statement, requesting that the criminal charges against the perpetrator be dropped, was submitted in court on the day of the perpetrator's arraignment. The certifying official further stated that the victim admitted that the perpetrator slapped her in the head but blamed herself for upsetting him. The petitioner also indicated that she called the police at her sister's encouragement.

On appeal, the petitioner submitted an updated and nearly identical Form I-918 Supplement B, dated September 13, 2013, executed by the same certifying official. In Part 4.5 of the form, the certifying official indicated further that since the time of the original certification, the case against the perpetrator had been prosecuted and that the perpetrator had pled guilty to one count of Simple Battery.

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

*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.

The petitioner has sufficiently established her helpfulness in the investigation and prosecution of qualified criminal activity as required by section 101(a)(15)(U)(i)(III) of the Act and by regulation at 8 C.F.R. § 214.14(b)(3). The preamble to the U nonimmigrant rule states, in pertinent part:

[United States Citizenship and Immigration Services (USCIS)] interprets "helpful" to mean assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. USCIS is excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested. . . . USCIS believes that the statute imposes an ongoing responsibility on the alien victim to provide assistance, *assuming there is an ongoing need for the applicant's assistance*.

72 Fed. Register 53014, 53019 (Sept. 17, 2007) (emphasis added).

The regulations require the petitioner to show that "since the initiation of cooperation, [s]he has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). Here, the certifying official specified on the Form I-918 Supplement B that the petitioner did not unreasonably refuse to provide assistance in the investigation or prosecution of the criminal activity. Although the certifying official indicated that the petitioner requested that the criminal charges against the perpetrator be dropped on one occasion at the perpetrator's arraignment, nothing in the record indicates that the petitioner refused or failed to provide information or assistance reasonably requested by law enforcement officials. Further, there is no evidence that the petitioner's assistance was requested or necessary to further the prosecution of the perpetrator. To the contrary, the updated Form I-918 Supplement B submitted on appeal confirms that the perpetrator was convicted of the qualifying crime committed against the petitioner, indicating that the petitioner's assistance was not necessary to obtain the conviction. Accordingly, the evidence of record demonstrates that the petitioner satisfied the helpfulness requirement imposed by regulation and statute to provide continuing assistance in the investigation or prosecution of qualifying criminal activity, when reasonably requested. We therefore withdraw the director's determination to the contrary.

*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 in order to waive a ground of inadmissibility. Here, the petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for the waiver of

inadmissibility since her underlying Form I-918 U petition had been denied. *See Decision of the Director*, dated August 16, 2013. 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). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192.

*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. The matter is returned to the director for reconsideration of the Form I-192 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.