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



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **AUG 07 2015**

IN RE: Petitioner: [REDACTED]

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:

[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief.

Applicable Law

Section 101(a)(15)(U) of the Act provides, in pertinent part, 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[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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[.]

* * *

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

Pursuant to the regulations, the petitioner also must 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). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

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 last entered the United States in September, 2005, without inspection, admission 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 June 18, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day.

On February 14, 2014, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation and/or prosecution of qualifying criminal activity and that she suffered resultant substantial physical or mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility with respect to whether she was helpful in the investigation and/or prosecution of qualifying criminal activity. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that she was helpful in the investigation of the qualifying criminal activity and that to deny her relief would be contrary to Congressional intent.

Claimed Criminal Activity

In her declaration, the petitioner recounted that, on [REDACTED] 2008, she was the victim of domestic violence perpetrated against her by her husband. She called the police, and when they arrived, she answered the officers' questions. The Incident Report indicates that the officers took two photographs of the petitioner. The petitioner stated that a few days after the incident, the police called her and she told them she did not want to press charges. She indicated that she does not recall telling the police that she would not testify in court.

The Form I-918 Supplement B that the petitioner submitted was signed by Detective Sergeant [REDACTED] [REDACTED] California, Police Department (certifying official), on January 15, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 243(E)(1) (battery against a spouse), as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, and Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official left the boxes blank. In Part 4.2, the certifying official indicated "Yes" to the question about whether the petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity. The certifying official, at Part 4.3, indicated in the negative as to whether the petitioner "[h]as not been requested to provide further assistance in the investigation and/or prosecution," and, at Part 4.4, also answered in the

negative when asked whether the petitioner “[h]as unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above.” The certifying official noted at Part 4.5 that the petitioner “told the investigator that she did not want to press charges and would not testify in court.”

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director’s decision to deny the petitioner’s Form I-918 U petition.

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3).

On the Form I-918 Supplement B, the certifying official indicated at Part 4.5 that the petitioner was unwilling to press charges and testify in court against her husband. As a result, the director requested an additional statement from the certifying official indicating that the petitioner was helpful in the investigation of the qualifying crime. However, the petitioner did not provide the requested letter from the certifying official. When denying the petition, the director noted that section 101(a)(15)(U)(i) of the Act requires evidence of the petitioner’s helpfulness to law enforcement authorities in order to establish eligibility for U nonimmigrant status, and that eligibility for U nonimmigrant status requires the ongoing responsibility to cooperate with the certifying agency.

On appeal, the petitioner states that she was helpful to the investigation against her husband because she called the police and answered their questions. She also asserts that she does not recall telling the police she would not testify in court, and that if she were asked now, she would be willing to prosecute. While the petitioner is correct that the statute and regulations do not require that the petitioner be helpful in both the investigation and prosecution of the qualifying criminal activity, the petitioner also must 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). Although the petitioner reported the criminal activity to the police and initially assisted in the detection of the criminal activity, once an investigator called to further the investigation, the petitioner refused to assist him or her. Furthermore, although the petitioner asserts that she did not want to press charges because her children did not want their father in jail, she has not established that the information and assistance requested by the law enforcement agency was unreasonable. *Id.*

A petitioner’s statement that she does not want to press charges against her abuser does not, by itself, show that she was not initially helpful to law enforcement authorities and/or refused to provide continuing cooperation in the investigation or prosecution of the crime perpetrated against her, nor is the indication by the certifying official at Part 4.4 dispositive that the petitioner’s refusal to press charges was reasonable. Rather, USCIS must look at the totality of the evidence in the record to determine whether a petitioner “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 . . . and since

the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4).

Here, although on the Form I-918 Supplement B, the certifying official indicated at Part 4.2 that the petitioner had been helpful, he also indicated at Part 4.5 that she had been unwilling to press charges or testify in court. As a result, the Form I-918 Supplement B reflects that, in a follow-up telephone call from the police investigator, the petitioner was requested to provide further assistance and the petitioner refused to provide assistance, as reflected in the hand-written notation at Part 4.5 of Form I-918 Supplement B. The petitioner did not submit a letter from the certifying official explaining this incongruity, nor did she provide evidence that the investigator’s requests were unreasonable or that the investigation or prosecution of the perpetrator was able to proceed without her assistance.¹

The petitioner also asserts that she is the type of person Congress intended to protect in creating U nonimmigrant status because she reported the crime to the police despite being undocumented and because she was deeply affected by the crime. However, Congress enacted certain requirements in order to show eligibility for a U nonimmigrant status, such as continuing helpfulness in the investigation or prosecution of the criminal activity, and we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials); 8 C.F.R. § 214.14(b)(3). For the reasons stated above, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

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.

¹ The Form I-918 Supplement B lists the case status as “completed.”