



U.S. Citizenship
and Immigration
Services

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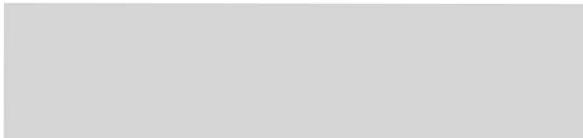
DATE: AUG 12 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), finding that the petitioner did not establish that she had been helpful, was being helpful, or was likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which she was a victim. On appeal, the petitioner submits a brief and a psychological evaluation.

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[.]

* * *

(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness

tampering; obstruction of justice; perjury; fraud in labor contracting (as defined at 18 U.S.C. § 1351); 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.

This regulatory provision “exclud[es] 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.* The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R.

§ 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States on January 1, 2005 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on December 26, 2012. The director issued a request for evidence (RFE) of the petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity upon which her petition was based. Additionally, the director requested a copy of the petitioner's passport and an updated Form I-918 Supplement B because the previously submitted copy was signed more than six months prior to the petitioner's submission of her Form I-918 U petition. The petitioner responded to the RFE with a personal affidavit regarding her helpfulness, a copy of her passport, and a newly signed Form I-918 Supplement B. The director found that the evidence was insufficient to establish that the petitioner had been helpful, was being helpful, or was likely to be helpful in the investigation or prosecution of the qualifying criminal activity upon which her petition was based. The director denied the petition and the petitioner filed a timely appeal.

Certified Criminal Activity

The Form I-918 Supplement B was first signed on April 18, 2012 by [REDACTED] Director, Victim Witness Unit, Office of the District Attorney, [REDACTED] Georgia (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity of which the petitioner was a victim as "Domestic Violence," "Rape," and "Other: False Imprisonment." At Part 3.3, the certifying official cited Ga. Code Ann. §§ 16-6-1 (rape), 16-5-23.1 (battery), and 16-5-41 (false imprisonment) as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. At Part 4.2 of the Form I-918 Supplement B, the certifying official checked "Yes" in response to the question whether the petitioner has been, is being, or is likely to be helpful in the investigation and/or prosecution of the criminal activity listed in Part 3. In Part 4.5, with regard to the petitioner's helpfulness, the certifying official stated:

Based on the investigative reports [the petitioner] reported the crime and was cooperative with law enforcement during the reporting and investigative process. However, shortly after the report, she spoke with and recanted directly to the defense attorney. Further, through verbal communications with our office, she stated that she had exaggerated in her statement to the police and wanted the charges dropped. She was not unresponsive to our office.

In response to the RFE, the petitioner submitted an updated Form I-918 Supplement B, signed by the certifying official on December 3, 2013. The updated Form I-918 Supplement B contained the same information as the previous version. Additionally, at Part 4.2, the certifying official signed her initials next to her "Yes" response to the question whether the petitioner has been, is being, or is likely to be helpful in the investigation and/or prosecution of the criminal activity listed in Part 3.

Analysis

The relevant evidence submitted below and on appeal establishes that the petitioner was helpful in the investigation of the qualifying criminal activity of which she was a victim. The director's contrary conclusion will be withdrawn.

On appeal, the petitioner argues that her hesitation to pursue criminal charges against her partner, who was the father of her four children and the perpetrator of the crimes against her, was due to the fact that she was the victim of severe domestic violence. Additionally, the petitioner asserts that, although she recanted her story and was pressured to drop the charges against her partner, the petitioner still cooperated with the police and the District Attorney's office. She claims that, as a result of her cooperation, her partner was convicted of a felony and incarcerated, and was later deported from the United States. Furthermore, the petitioner informed [REDACTED] Licensed Clinical Social Worker, who prepared the psychological evaluation, that she received a letter from the District Attorney's office stating, "Although your cooperation and input thus far is greatly appreciated, your assistance in the prosecution of this case will no longer be needed."¹

The record does not indicate that the petitioner "refused or failed to provide information and assistance reasonably requested" by the certifying official. 8 C.F.R. § 214.14(b)(3). To the contrary, the certifying official indicated on two versions of Form I-918 Supplement B that the petitioner had been helpful, was being helpful, or was likely to be helpful in the investigation or prosecution. Furthermore, the certifying official signed her initials next to her "Yes" response to Part 4.2 in the updated Form I-918 Supplement B, specifically indicating that she had intentionally reported that the petitioner was helpful. Although the certifying official stated in Part 4.5 that the petitioner later recanted her statement in conversations with the defense attorney and told the certifying official that she did not want to press charges, the certifying official also noted that the petitioner was helpful and cooperative "during the reporting and investigative process" and responded to requests from the certifying official.

The conviction records support the certifying official's statement that the petitioner reported the crime and was helpful during the investigation. The records indicate that a warrant was issued for the arrest of the petitioner's partner on the same day she reported that he raped and battered her,² and that he was charged with rape, battery with substantial physical harm, and false imprisonment in relation to that incident. The petitioner's partner later pled guilty to false imprisonment, was sentenced to ten years in prison, and was ordered not to have contact with the petitioner. This indicates that the petitioner made a report leading to the detection of criminal activity, and does not support a finding that the petitioner was "unwilling to provide information concerning the criminal activity to allow an investigation to move forward" or that she refused or failed to provide assistance. 8 C.F.R. § 214.14(a)(5); 72 Fed. Reg. 53014, 53019.

Furthermore, the petitioner's affidavits demonstrate that her reluctance to press charges against her partner was due to fear stemming from having been a domestic violence victim, and not due to a failure

¹ The record does not contain a copy of this letter.

² The date of the criminal activity as indicated on the Form I-918 Supplement B.

or refusal to provide assistance in the investigation. In an affidavit dated May 25, 2012 and submitted with the Form I-918 U petition, the petitioner stated that, after reporting her partner's abuse, she was alone with her three children, pregnant with a fourth child, and had nowhere to live. She claimed that she and her children had to stay with her partner's sister, who often mentioned the reasons that the petitioner's partner was in jail. Additionally, the petitioner stated that her partner sometimes called her from jail and threatened to harm her if she did not drop the charges against him. She claimed that she spoke with the prosecutor and gave him full and truthful information about what occurred, but told him that she did not want to be involved and that the prosecutor should do what he felt was best. The petitioner also stated that she once told her partner's lawyer that she did not want to press charges against her partner, but she "said that because [she] was very scared and in reality [she] felt really bad." In an affidavit dated January 27, 2014 and submitted in response to the RFE, the petitioner stated that she endured severe domestic abuse at the hands of her partner for many years, and that she feared that if he went to jail as a result of her allegations, he would harm her and her children. She stated that her fear for her safety and that of her children made her feel "obligated to not say anything, to keep quiet, to drop the charges against him."

In a psychological evaluation submitted on appeal, [REDACTED] also indicates that the petitioner recanted her story to her partner's defense attorney only because she was pressured to do so. According to [REDACTED] the petitioner reported that her partner's sister and brother, with whom the petitioner and her children were living because she and her children were homeless, escorted her to the defense attorney's office and told her what to say. Additionally, [REDACTED] states that, due to the severe and ongoing domestic violence, rape, and threats the petitioner experienced, the petitioner believed that her partner would kill her and her family if she did not speak to his attorney. [REDACTED] asserts that it is common for domestic violence victims to change or recant their testimony against their abusers due to fear of retaliation, need for the financial support of the abuser or his family members, and other pressures. According to [REDACTED] the petitioner's "actions which appeared to be interpreted as uncooperative with law enforcement . . . fall under the typical symptoms of the battered wife's syndrome." [REDACTED] also recommended that the petitioner seek counseling to treat posttraumatic stress disorder, depression, and anxiety.

The evidence of record establishes that the petitioner filed a police report regarding her partner's domestic violence against her, provided information regarding the crime to the certifying official, and responded to the certifying official's requests. The certifying official indicated, in two separate versions of Form I-918 Supplement B, that the petitioner had been helpful in the investigation or prosecution of her partner. Although the certifying official also indicated that the petitioner recanted her testimony to the defense attorney and was reluctant to press charges, the evidence does not support a finding that she failed or refused to provide assistance in the investigation or prosecution. Instead, the evidence demonstrates that the petitioner's reluctance stemmed from fear of harm relating to the severe domestic violence she had suffered, as well as threats and pressure from her partner and his family. Additionally, the petitioner's partner was convicted of a crime against her despite her reluctance to be involved. Therefore, the evidence demonstrates that the petitioner was helpful in the investigation and prosecution of the qualifying crime on which her petition is based, as required by section 101(a)(15)(U)(i)(III) of the Act. We withdraw the director's decision to the contrary.

Admissibility

Notwithstanding our withdrawal of the director's determination, the instant petition may not be approved because the petitioner 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 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, Application for Advance Permission to Enter as Nonimmigrant, 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. 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

As in all visa petition proceedings, the petitioner bears the burden of proving eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

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.