

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

(b)(6)



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".

<sup>f</sup> 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 additional evidence.

*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 in November 1992 without inspection, admission, or parole. The petitioner filed a Form I-918 U petition on November 14, 2012. The director issued a request for evidence (RFE) because the Form I-918 Supplement B the petitioner submitted was signed more than six months prior to the filing of her Form I-918 U petition, and she did not file a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. Additionally, the director issued a second RFE of the petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity upon which her petition was based. The petitioner responded to the RFEs with a newly signed Form I-918 Supplement B, a Form I-192, declarations, and other evidence. 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 May 10, 2012 by [REDACTED] Sergeant-Records Division, [REDACTED] Police Department, [REDACTED] Illinois (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. At Part 3.3, the certifying official cited 720 ILCS 5/12-3(a)(1) (battery) as the relevant criminal statute 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:

The Victim called the [REDACTED] Police to report the 15 Mar 09 incident on 22 Mar 09. The Victim also called the [REDACTED] Police to report an incident that occurred on 9 Sep 11. The investigating Detective in both reported cases attempted to contact the Victim with the information provided via telephone with negative results. The Detectives the[n] sent the Victim letters on both occasions with no response.

In response to the RFE, the petitioner submitted an updated Form I-918 Supplement B, signed by the certifying official on November 20, 2013. The updated Form I-918 Supplement B contained the same information as the previous version.

*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.

In her brief on appeal, the petitioner alleges that she assisted law enforcement by filing police reports against her abusive spouse, thereby aiding in the detection of the qualifying criminal activity. She further asserts that it was unreasonable for the [REDACTED] Police Department (CPD) to expect her to respond to additional communications in English. She states that the record shows that she only speaks Spanish and that her minor son translated for her when the police responded to her calls. The petitioner also alleges that the [REDACTED] did not employ appropriate translation methods when responding to the petitioner's calls or when attempting to follow up with her by telephone and mail. She cites a report from the Office for Civil Rights of the U.S. Department of Justice, which indicates that the [REDACTED] has not met its obligations under Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 to provide proper language access to limited English proficient (LEP) individuals.

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 signed two copies of Form I-918 Supplement B, in which he indicated that the petitioner had been helpful, was being helpful, or was likely to be helpful in an investigation or prosecution. Although the certifying official also stated in Part 4.5 that the petitioner did not reply to telephone calls and letters after she filed reports with the police, the certifying official did not claim that the petitioner was not helpful or that she failed to respond to reasonable requests. The documents the petitioner submitted also show that the petitioner was diligent in pursuing protection through the relevant authorities, and that any lack of response to the [REDACTED] was due to inability to understand and communicate in English rather than a failure or refusal to respond to reasonable requests. Due to the petitioner's previous communications with the [REDACTED] in which she could not communicate in English and had to ask her minor son to interpret for her, it was not reasonable for the [REDACTED] to request further information from her only in English. Additionally, although the director stated that the police visited the petitioner's home in an effort to speak with her about the investigation or prosecution and that she did not respond, the record does not support this finding.

In her declaration dated September 22, 2014 and submitted on appeal, the petitioner states that, when she was the victim of domestic abuse in March 2009, her then-[REDACTED] son called the police at her request. She claims that she called the police after another incident in September 2011 and requested an officer who spoke Spanish, but English-speaking officers arrived at her home. As a result, her then-[REDACTED] son interpreted for her. The petitioner further states that she went to court after the September 2011 incident and requested an order of protection through the help of Spanish-speaking court assistants. She contends that she believed it was her responsibility to notify the police of the abuse and that, thereafter, the police would search for her spouse while the court order protected her. She states that she did not understand that the police might contact her after she obtained an order of

protection. The petitioner notes that her mother told her that the police visited their home on three occasions while the petitioner was at work, but that her mother does not speak English and believed the police were only looking for the petitioner's spouse. Additionally, the petitioner states that, although she received a letter after the September 2011 incident, the letter was in English so she did not understand it, and she believed it repeated information she already received from her attorney regarding her order of protection. The petitioner does not recall receiving calls or voicemail messages from the police. In an April 10, 2014 affidavit submitted in response to the RFE, the petitioner similarly stated that she cannot speak or read English. She claimed she received letters from the police after filing reports against her spouse, but she could not read them and did not understand they were requesting more information from her. She also indicated that she did not recall receiving calls from the police, but that, if the calls were in English, she would not have understood or been able to return them.

The petitioner's mother states, in a declaration submitted on appeal, that the police visited her home three times in 2011 and asked for the petitioner's spouse. She claims she did not communicate with the officers because they did not speak Spanish, but that she heard them say the name of the petitioner's spouse and not the name of the petitioner. In a similar declaration submitted in response to the RFE, the petitioner's mother stated that the police visited her home, spoke to her in English although she could not understand, walked through her house, and left. The petitioner's son also submitted a letter, filed in response to the RFE, in which he affirmed that he witnessed an assault by his father against his mother and interpreted for his mother when the police arrived.

an attorney who contacted the certifying official on the petitioner's behalf, states in a letter provided on appeal that she spoke with the certifying official and he told her that there was no evidence in the file that any police officers visited the petitioner's home in an effort to obtain more information from her about the complaints she filed against her spouse and that, based on internal protocols, police officers would not have visited her home to obtain additional information. Additionally, according to letter based on her conversation with the certifying official, telephone calls were made and letters sent by the to the petitioner's home but the did not receive a response and all letters and telephone calls were in English. This information, albeit indirectly from the certifying official, confirms the petitioner's account that she was helpful to the investigation of her spouse and that any inability to cooperate was not unreasonable, given the language barrier.

Although the petitioner also submits on appeal a report from the U.S. Department of Justice Office for Civil Rights (OCR Report), this report does not establish the practices of the during the time the petitioner contacted the. The OCR Report states that officers and staff within the often did not employ available methods for ensuring that LEP individuals could communicate effectively with the police. Instead, officers and staff frequently used hand gestures, personal foreign language skills, interpretation by friends or family members of the LEP individual, broken English, or other ways to "get by" during encounters with LEP individuals. However, the OCR Report was issued on December 4, 2007, before the petitioner filed police reports on March 15, 2009 and September 9, 2011. The record does not reflect whether the changed or improved its communication methods with LEP individuals by the time the petitioner filed her reports. The petitioner also submits a copy of The

██████████ New Americans Plan, which she states was issued in November 2012 and confirms that the City of ██████████ had not yet implemented a language access policy for LEP individuals, but the document does not bear a publication date. Nevertheless, the remaining evidence in the record does indicate that the petitioner had difficulty communicating with the ██████████ when she filed her reports and could not understand their follow-up calls and letters due to the fact that they were in English.

Furthermore, court records indicate that the petitioner pursued an order of protection against her spouse following the September 9, 2011 incident. The records show that she first petitioned for an order of protection on September 14, 2011 and continued to follow up on extensions of the order until at least January 11, 2014. This indicates that the petitioner was diligent in providing information about the domestic violence she suffered and in pursuing protection from the authorities, and does not support a finding that she would refuse or fail to respond to reasonable requests relating to this matter if they were provided in a language she could understand.

The evidence of record establishes that the petitioner filed two police reports regarding her spouse's domestic violence against her and provided information regarding the crimes to the certifying official. Her reports aided in the detection of the criminal activity, as demonstrated by the police reports and the orders of protection issued on her behalf. The certifying official twice signed Form I-918 Supplement B, in which he indicated that the petitioner had been helpful in the investigation or prosecution. Although the certifying official also stated that the petitioner did not respond to follow-up telephone calls and letters, the evidence does not support a finding that she 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. Instead, the evidence shows that the petitioner contacted the police to provide information, diligently pursued protection from the courts, and would have responded to further requests for information if she were able to understand them. Communications to the petitioner only in English were not reasonable. Therefore, 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 will 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 and 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 was 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.