**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**

(b)(6)

Date: AUG 20 2015

FILE #:
PETITION RECEIPT #:

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 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,

for Ron Rosenberg
Chief, Administrative Appeals Office

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

The director denied the petition because the petitioner had not established that a qualifying crime was investigated or prosecuted by the certifying agency or 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 filed the this appeal and submits a brief and a copy of a Crime Summary from the Police Department concerning the qualifying crime in support of the appeal.

*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 --
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> * * *
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
>
> * * *
>
> (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:

(a)(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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

(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. . . .;

* * *

(c) Application procedures for U nonimmigrant status—(1) Filing a petition . . .

(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.
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> (ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

* * *

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 October 1998. The petitioner does not assert, and the record does not show, that she was admitted, inspected, or paroled. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), on May 31,

2013. The direct victim in this case, the petitioner's son, was years old when the qualifying criminal activity occurred and was years old when the instant petition was filed. As a result, his mother had standing to file the U visa petition. The director issued a first Request for Evidence on October 9, 2013 regarding whether the petitioner was a victim of substantial physical or mental abuse as a result of qualifying criminal activity and the petitioner provided additional relevant evidence in response. On January 17, 2014, the director issued a second Request for Evidence (RFE) establishing that the petitioner was helpful in the investigation or prosecution of the criminal activity perpetrated against her and that any qualifying crime was investigated or prosecuted. The petitioner responded to the second RFE with additional evidence, including an updated personal statement and psychiatric assessments her and her son. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition on September 9, 2014, concluding that the petitioner had not established that a qualifying crime was investigated or prosecuted and that she met the helpfulness requirement under section 101(a)(15)(U)(i)(III) of the Act. The petitioner appealed the denial of the Form I-918.

*Claimed Criminal Activity*

The petitioner, in her personal statement dated May 28, 2013, indicated that she had been in an abusive relationship with F-G-[1] since 1997, and the couple lived together first in Mexico and then in the United States until 2002. The petitioner detailed incidents of domestic violence committed against her by F-G- including drunken outbursts and physical altercations that occurred in front of her children. The petitioner also stated that, one morning in 2000, her older son, who was years old at the time, left the house early in the morning without telling anyone. She stated that she and F-G- looked for her son, but could not find him and he returned several hours later on his own. F-G- became very upset at her son as a result and used a belt to hit her son 3 or 4 times across the back, leaving dark bruises. She reported that her son complained to his teacher soon after that incident that his back was hurting, the teacher saw the bruises, and the police were called as a result. The petitioner told the police what had happened and allowed the police to take pictures of the bruises. The petitioner stated that she and F-G- had to take parenting classes as a result of the incident, but that she did not think that F-G- was charged with any offense. In an updated statement, dated December 13, 2013, the petitioner stated that F-G- also regularly spanked her sons and pulled their ears whenever they did something he did not like.

The Form I-918 Supplement B that the petitioner submitted was signed on April 30, 2013, by a paralegal with the District Attorney's Office, California (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 "Ddomestic Violence". The certifying official left Part 3.3, requesting the relevant criminal statute for the criminal activity that was investigated or prosecuted, blank. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner's son was beaten with a belt by the petitioner's live-in boyfriend. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official noted that the petitioner's sons had marks on his back consistent with being hit with a belt. In Part 4, the certifying official indicated that the petitioner: (1) possesses information concerning the criminal activity against the petitioner; (2) has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity; and (3) has not

[1] Name withheld to protect individual's identity.

unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the such activity. In Part 4.5, inquiring about additional information relating to the victim's helpfulness, the certifying official stated that the petitioner's son notified his school of his injuries and the petitioner cooperated with the police in making a report and allowing them to take pictures of her son's injuries.

On appeal, the petitioner submitted a Crime Summary from the Police Department, dated May 30, 2000, recounting that the petitioner's son was hit by F-G- with a belt two days prior for failing to let his parents know where he was going when he left the house. The Crime Summary also stated that F-G- had hit both of the petitioner's sons with an open hand previously. The Crime Summary also stated that the petitioner willingly spoke about the incident with the officer and that both she and F-G- requested assistance regarding better ways to discipline the children.

*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 that a qualifying crime, specifically domestic violence, was investigated or prosecuted as required by the regulation at 8 C.F.R. § 214.14(b)(2) and (3). The regulation provides the following definition:

> 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.

8 C.F.R. § 214.14(a)(5).

The record contains a Form I-918 Supplement B signed by a certifying official with the District Attorney's Office. The Form I-918 Supplement B indicates that the crime of domestic violence was investigated by the Police Department. The Crime Summary submitted on appeal states that the Police Department investigated a claim of domestic violence perpetrated against the petitioner's minor son. Based on the foregoing, the petitioner established that a qualifying crime was investigated by a certifying agency as required by the regulation and statute. We, therefore, withdraw the director's decision to the contrary.

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 the regulation at 8 C.F.R. § 214.14(b)(3). The preamble to the U nonimmigrant rule states, in pertinent part:

> [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).

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, nothing in the record indicates that the petitioner refused or failed to provide information or assistance reasonably requested by the Police Department or the District Attorney's Office at any point after she commenced her cooperation in its investigation of the qualifying criminal activity. To the contrary, the certifying official specified on the Form I-918 Supplement B that the petitioner was helpful in the investigation and prosecution of the criminal activity perpetrated against her and that she did not unreasonably refuse to provide assistance in the investigation or prosecution. In addition, the Crime Summary indicates that the petitioner fully relayed the events of the criminal activity to the police, and the Form I-918 Supplement B indicates that she cooperated fully with the investigation of the incident. Based on the foregoing, 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*

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 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. 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).

In this case, the director denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192,* dated September 9, 2014. The director indicated that the petitioner was inadmissible under sections 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) (present in the United States without admission or parole). However, the director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver, but denied her waiver request based solely on the denial of her Form I-918 U petition. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

*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 been met.

**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, which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.