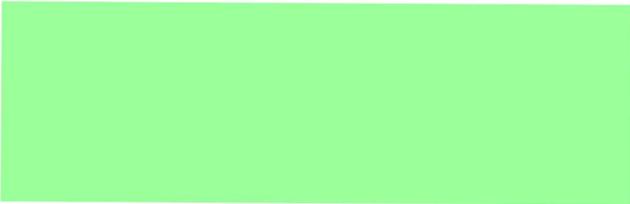




U.S. Citizenship  
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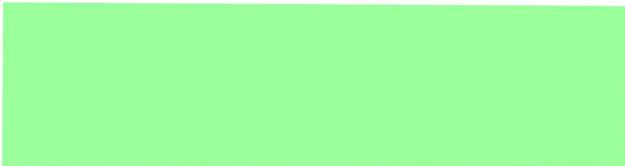


Date: **FEB 10 2015** Office: VERMONT SERVICE CENTER File:

IN RE: Self-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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 appeal will be dismissed and the petition will remain denied.

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 for the petitioner's failure to establish his helpfulness to law enforcement authorities in the investigation or prosecution of qualifying criminal activity and because he is inadmissible to the United States. On appeal, the petitioner submits a three paragraph brief stating that he submitted sufficient evidence to demonstrate his eligibility.

*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: . . . sexual assault; . . . 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 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[.]

\* \* \*

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(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 petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity[.]

(ii) Any additional evidence that the petitioner wants [U.S. Citizenship and Immigration Services (USCIS)] to consider to establish that: . . . the petitioner . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or other authority . . . investigating or prosecuting the criminal activity of which the petitioner is a victim[.]

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 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, a native and citizen of Mexico, represents that he first entered the United States on or about May 1, 1991, without inspection, admission or parole.<sup>1</sup> On May 3, 1995, the petitioner was issued an Order to Show Cause and Notice of Hearing and placed into deportation proceedings. On [REDACTED] the petitioner's girlfriend, J-S-<sup>2</sup>, gave birth to his daughter, S-R-<sup>3</sup>, a U.S. citizen, in [REDACTED] Indiana. On November 8, 1995, the petitioner was ordered deported to Mexico in absentia. In 2002, the petitioner was removed from the United States by immigration officials. The petitioner indicated that he stayed in Mexico for approximately three months before returning to the United States. After numerous interactions with law enforcement officials, in 2012 the petitioner was placed in immigration detention and immigration officials reinstated the previous removal order against him.

On June 6, 2012, the petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The director subsequently issued a Notice of Intent to Deny (NOID) on January 21, 2014, notifying the petitioner of the deficiencies of his Form I-918 Supplement B and supporting evidence with respect to his helpfulness to law enforcement in the investigation or prosecution of the qualifying criminal activity. The petitioner responded to the NOID with a new Form I-918 Supplement B and a personal statement, which the director found insufficient to establish the petitioner's eligibility for the benefit sought. Accordingly, the director denied the petition on May 29, 2014, concluding that the petitioner had not established that he 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 and that he is inadmissible to the United States. The petitioner appealed the director's decision.

*Qualifying Criminal Activity*

In his personal statements, the petitioner indicated that while he was in immigration detention he learned during a phone call with his girlfriend, A-A-<sup>4</sup>, that S-R-, his then 16-year-old daughter, had recently confided that she had been sexually abused by her mother's husband when she was younger. A-A- informed the petitioner that they had called the Department of Child Services, which interviewed both the

<sup>1</sup> In one of his personal statements, the petitioner indicated that he first entered the United States in 1993.

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> Name withheld to protect the individual's identity.

<sup>4</sup> Name withheld to protect the individual's identity. Additionally, the record shows that the petitioner and his girlfriend, A-A-, were married on [REDACTED]

petitioner's daughter and her mother, and that A-A- subsequently took S-R- to the police station to make a report. The petitioner submitted a police report, dated March 4, 2012, which described two incidents of sexual abuse perpetrated by S-R-'s former stepfather when she was nine years old. In his statement, the petitioner indicated that after he learned of what had occurred, he spoke with A-A- and S-R- every couple of days to see how they were doing. The petitioner subsequently learned that the Department of Child Services had requested that S-R- provide videotaped testimony regarding the abuse, and he arranged for an attorney to accompany her to the interview so that she would feel more comfortable. The petitioner provided a notice from the Department of Child Services with S-R-'s case number.

The original Form I-918 Supplement B submitted by the petitioner named S-R- as the victim. The original Form I-918 Supplement B indicates that criminal charges related to the sexual abuse were not pursued because the suspect was no longer in the country. The second Form I-918 Supplement B, provided by the petitioner in response to the NOID, was signed by Detective Sergeant [REDACTED] of the [REDACTED], Indiana, Police Department, (certifying official) on February 20, 2014. The updated Form I-918 Supplement B lists the petitioner's name on the Form at Part 1, and indicates at Part 4.2 that he has been, is being, or is likely to be helpful in the investigation and/or prosecution of the detailed criminal activity. However, at part 3.5, where the certifying official is asked to describe the involvement of the individual listed in Part 1, the petitioner is not mentioned. At Part 4, where the certifying official is asked to describe the helpfulness of the victim, the certifying official left the box blank.

In an affidavit dated February 10, 2014, the petitioner indicated that he was heartbroken when he learned that his daughter had been molested. He stated that when he was released from detention, he called the police and went to the police station to offer his assistance with the investigation, but the police were not receptive to his offers to help.

### *Analysis*

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Section 214(p)(1) of the Act requires a Form I-918 U petition to be accompanied by a certification from a certifying official that states that the petitioner "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). Here, the certifying official certified the petitioner's helpfulness in the investigation or prosecution of the criminal activity at Part 4.2 of the Form I-918 Supplement B; however, the evidence of record does not establish that the petitioner was helpful to law enforcement with respect to the qualifying criminal activity.<sup>5</sup>

Typically, where a minor child is the victim of a qualifying crime, a parent may demonstrate helpfulness to law enforcement by assisting in an investigation or prosecution on behalf of the child victim or by

<sup>5</sup> We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

facilitating the child victim's own helpfulness to authorities. *Cf.* 8 C.F.R. § 214.14 (b)(3) (specifying that where an alien victim is under 16 years of age at the time of the qualifying criminal activity, a parent may provide the required assistance). However, in the instant matter, the petitioner was in immigration detention when his 16-year-old daughter revealed and reported the crime, and during the entirety of the brief investigation. The original Form I-918 Supplement B indicates that criminal charges were not pursued because the suspect was no longer in the United States. It was A-A-, the petitioner's girlfriend, who facilitated S-R-'s helpfulness to authorities, not the petitioner. While the petitioner represents that he offered his assistance to police after he was released from detention, the record contains no indication that he was actually helpful to authorities with respect to the qualifying criminal activity. In the Form I-918 Supplement B, the certifying official did not mention the petitioner other than listing him at Part 1, and did not describe any way in which he was helpful to the investigation or prosecution of the crimes against his daughter, nor was he mentioned in the accompanying police report. Further, in his affidavit, the petitioner noted that the police were not receptive to his offers of assistance. In addition, the record contains no evidence indicating that there might be an opportunity for the petitioner to be helpful in the future with respect to this matter. We note that the petitioner claims no personal knowledge of the qualifying criminal activity, the incident occurred while S-R- was in her mother's custody, and S-R- is now 20 years old and able to testify on her own behalf should the opportunity arise. We acknowledge the petitioner's *desire* to be helpful to authorities with respect to his daughter's abuse; however, the plain language of the statute requires actual past, present, or likely future assistance. The preponderance of the relevant evidence does not establish that the petitioner has met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act.

*Waiver of Inadmissibility*

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as Non-Immigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The director denied the petitioner's Form I-192 waiver application. On appeal, the petitioner asserts that he has demonstrated that he does not pose a risk of harm to society, that he has rehabilitated, and that he merits a favorable exercise of discretion such that his waiver application should be granted. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." We thus lack jurisdiction to review the director's decision to deny the Form I-192. The only issue before us is whether the director was correct in finding the petitioner inadmissible to the United States, therefore requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). On appeal, the petitioner does not dispute that he is inadmissible to the United States on the stated grounds. We have no jurisdiction to review the matter further. *See* 8 C.F.R. § 212.17(b)(3). The petitioner is inadmissible to the

United States under the grounds cited by the director,<sup>6</sup> and has not shown that these grounds of inadmissibility have been waived through the grant of a 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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.

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<sup>6</sup> The director found the petitioner inadmissible under sections 212(a)(6)(A)(i) (entry without inspection), 212(a)(7)(B)(i)(I) (no valid passport), and 212(a)(2)(A)(i)(I) (conviction for a crime involving moral turpitude) of the Act. We also note that the petitioner appears inadmissible under sections 212(a)(2)(A)(i)(II) (violation of any law relating to controlled substances) and 212(a)(9)(A)(ii) (aliens previously removed seeking admission within ten years of removal) of the Act.