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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: **FEB 25 2015** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: PETITIONER:  
BENEFICIARY:

[Redacted]

PETITION: Petition for Qualifying Family Member of U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:

[Redacted]

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 Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of the beneficiary. 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 of the beneficiary under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 nonimmigrant.

The director denied the Form I-918 Supplement A determining that the beneficiary was not eligible for classification as a U nonimmigrant because he was culpable for the criminal activity in which the petitioner was a victim and which established the petitioner's eligibility for U nonimmigrant status. On appeal, the petitioner submits a brief and copies of documents already included in the record.

#### *Applicable Law*

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. For an alien victim of certain criminal activity who is 21 years of age or older, section 101(a)(15)(U)(ii)(II) of the Act defines a qualifying family member as the victim's spouse and children. *See also* section 214(p)(7) of the Act.

However, "[a] qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status." 8 C.F.R. § 214.14(f)(1).

#### *Facts and Procedural History*

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 15, 2013. The petitioner concurrently filed a Form I-918 Supplement A on behalf of the beneficiary. The Form I-918 Supplement B was signed by [REDACTED] South Carolina, Sheriff's Office (certifying official), on November 5, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner was a victim of two separate incidents of domestic violence that occurred on July 27, 1996, and November 16, 1998. The beneficiary was listed as the suspect for the domestic violence incident that occurred on November 16, 1998. On April 18, 2014, the director determined that the petitioner established the eligibility requirements for U nonimmigrant status; however, the statutory cap for U-1 nonimmigrant visas had been reached so the petitioner was placed in deferred action until new U nonimmigrant visas were available. On the same day, the director denied the Form I-918 Supplement A finding that the

beneficiary was not eligible for classification as a U nonimmigrant because he was culpable for the criminal activity in which the petitioner was a victim.

*Analysis*

The AAO conducts 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 U-2 nonimmigrant status to the beneficiary.

On the Form I-918 Supplement B, the certifying official certified that two separate incidents of domestic violence against the petitioner had been "investigated or prosecuted," and that the beneficiary committed one of those incidents of domestic violence against the petitioner. The incident report dated November 16, 1998, indicates that the beneficiary was the suspect in a criminal domestic violence incident against the petitioner. The responding officer indicated that when he arrived at the scene, the beneficiary was "kicking" the petitioner, and the officer immediately detained the beneficiary. The responding officer interviewed the petitioner and the petitioner reported that she and the beneficiary had been living together for approximately three years. She stated that the beneficiary accused her of cheating on him, and "without provocation, [he] began beating her with his fists. She attempted to run but he drug her to the ground by her hair and began kicking her. [The beneficiary] struck her too many times for her to recall." In his affidavit dated February 26, 2014, the beneficiary acknowledges that he physically abused the petitioner on November 16, 1998.

According to the regulation at 8 C.F.R. § 214.14(f)(1): "A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status." Although on appeal the petitioner claims that her Form I-918 U petition was submitted based only on the domestic violence incident that occurred on July 27, 1996, the Form I-918 Supplement B certified that the petitioner was a victim of two separate incidents of domestic violence and the beneficiary committed one of those domestic violence incidents against the petitioner. As such, the beneficiary is culpable of the qualifying criminal activity which the certifying agency investigated and prosecuted, and therefore, he cannot be granted U-2 nonimmigrant status. 8 C.F.R. § 214.14(f)(1). Accordingly, we will not disturb the director's decision.

*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.