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: FEB 27 2015 Office: VERMONT SERVICE CENTER File:

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 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,

for 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 after determining that the petitioner had not established that she was a victim of qualifying criminal activity. On appeal, the petitioner submits a brief and additional evidence, asserting that she is a victim of the qualifying criminal activity of domestic violence.

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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> (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: . . . domestic violence; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14. The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

> * * *
>
> (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.

* * *

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

* * *

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 of Venezuela and citizen of Colombia who last entered the United States on March 9, 2012, when she was paroled into the United States after being denied asylum in Canada. The petitioner was placed into removal proceedings before an immigration judge pursuant to a Notice to Appear issued March 9, 2012. The petitioner's removal proceedings remain pending.

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), on January 22, 2013. The director issued a Request for Evidence (RFE) for the petitioner to establish that the claimed criminal activity against her is a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act or substantially similar to one, and that she suffered substantial physical or mental abuse as a result of the qualifying criminal activity. The RFE also notified the petitioner that she was inadmissible under section 212(a)(6)(C)(i) of the Act and was required to file a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to waive her inadmissibility. The petitioner responded to the RFE with a Form I-192 and additional evidence.

The director ultimately found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on March 26, 2014, concluding that the petitioner had not established that she was a victim of the claimed qualifying criminal activity of domestic violence. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner contends that she is the victim of the qualifying criminal activity of domestic violence, as indicated by the certifying official on the Form I-918 Supplement B.

Claimed Criminal Activity

The petitioner, in her personal statement, indicated that she had been in a long term, abusive relationship with her boyfriend, M-B-.[1] The relationship was primarily long distance until December 2011, when the petitioner arrived in the United States to reside with M-B-. The petitioner stated that M-B- became more controlling over time. On August 30, 2012, following an argument, the petitioner threw M-B-'s remote control on the floor out of frustration. The petitioner stated that M-B- responded by breaking the petitioner's laptop, and that he started to push and pull her, hurting her arms. When the petitioner grabbed M-B-'s cellphone to call her neighbor, M-B- grabbed her arm and threatened to break her head open with a metal napkin holder he held in his hand. The petitioner indicated that she screamed, believing he would kill her. After she returned the cellphone, M-B- locked himself in the bedroom and the petitioner left for a neighbor's. The police arrived shortly afterwards. The petitioner stated that the laptop M-B- had thrown was closed so the police did not see the broken screen. Both the petitioner and M-B- were arrested. The petitioner stated that she bears emotional scars from the abuse she suffered and is unclear whether she will ever recover, although she is seeking counseling to help her.

The Form I-918 Supplement B that the petitioner submitted was signed on November 23, 2012, by Chief of Police, Police Department, Connecticut (certifying official). In Part 3.1, which inquires about the criminal activity of which the petitioner was a victim, the certifying official checked the box for "domestic violence." In Part 3.3, the certifying official cited section 53a-182 of the Connecticut General Statutes Annotated, which relates to the offense of Disorderly Conduct, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that both the petitioner and her co-habiting partner were arrested after a domestic violence incident was reported to the police. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicates that the petitioner reported that her partner hurt her arm, although no injuries were visible or documented. In Part 4.5 of the form, he stated that the petitioner cooperated with the police, answering all questions posed to her.

Analysis

We conduct appellate review on a *de novo* basis. Upon review, insofar as the director determined that the offense of disorderly conduct under Conn. Gen. Stat. Ann. § 53a-182 that was investigated and prosecuted by the certifying agency here did not constitute qualifying criminal activity, we withdraw that finding.

The qualifying criminal activities enumerated at section 101(a)(15)(U)(iii), including domestic violence, are not listed as specific statutory violations but rather in more broad terms, allowing for the possibility that varying state criminal statutes may name an offense differently than those on the statutorily enumerated list. 72 Fed. Register 53014, 53018 (Sept. 17, 2007). The record here provides ample evidence that the underlying criminal offense, disorderly conduct, was classified as a domestic violence

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

offense under Connecticut state laws by the certifying agency, and is, therefore, a qualifying criminal activity for purposes of U nonimmigrant visa classification. The certifying official specified at Part 3.1 of the Form I-918 Supplement B that the criminal activity committed against the petitioner was domestic violence, and at Part 3.5, he stated that a domestic violence incident was reported to the police. Nothing in the record contradicts the certifying official's certification of the criminal offense as a domestic violence offense. To the contrary, the record contains the police report from the date of the incident, protective order issued against the petitioner's partner, record of a protective order issued against the petitioner arising from the same incident, and case information printouts regarding the criminal case that was brought against both of them, all of which indicate that they relate to a domestic or family violence incident. Consequently, the record sufficiently demonstrates that the disorderly conduct offense that was investigated and prosecuted by the certifying agency here is a domestic violence offense, and thus, constitutes a qualifying criminal activity. Accordingly, we withdraw the director's determination on this issue.

However, we may not approve the instant petition, as the record does not establish that the petitioner is a victim of qualifying criminal activity, as defined at 8 C.F.R. § 214.14(a)(14). Pursuant to 8 C.F.R. § 214.14(a)(14)(iii), the petitioner is excluded from being recognized as a victim of qualifying criminal activity because the record demonstrates that she is in part culpable for the domestic violence incident that was investigated and prosecuted by the certifying agency on August 30, 2012. The record indicates that the petitioner, as well as her partner, M-B-, was arrested, investigated and initially prosecuted for disorderly conduct as part of a domestic violence incident at their residence. The incident report from August 30, 2012, shows that the petitioner admitted to throwing her partner's remote control and pushing him during their dispute and that her partner similarly admitted to throwing the petitioner's laptop and pushing her. The report indicates that their admissions led to their arrests for disorderly conduct for having *mutually* engaged in a physical altercation against each other. The record also shows that a protective order was issued against the petitioner in favor of her partner as the protected person, and vice versa. An October 26, 2012, incident report in the record indicates that the petitioner requested a one-time police escort to her former residence to obtain her things because of the protective order in place against her, barring her from returning there.

The petitioner asserts on appeal that the fact that she was also arrested during the incident is not dispositive as to whether or not she was also a victim, because Connecticut law mandates dual arrests during a domestic violence incident where it is unclear who the perpetrator is. She contends that, in this instance, she was quickly identified as the victim in her relationship with M-B-, and notes that the disorderly conduct charge against her was eventually dismissed within a matter of months, while M-B-'s criminal proceedings continued for over a year until October 2013. As discussed, however, the record here demonstrates that both the petitioner and her partner were arrested for disorderly conduct, because they expressly admitted their own culpability for criminal conduct, and not because it was uncertain to the officers who the perpetrator was. Further, the petitioner's assertion that she was quickly identified as the victim is not reflected in the record, including the Form I-918 Supplement B, in which the certifying official specified that the petitioner and her partner were both arrested in the domestic violence incident. Although the certifying official noted that the petitioner was a victim of the domestic violence offense, given that their agency also arrested the petitioner, he did not clarify whether the certifying agency

identified the petitioner as the *only* victim during the incident. While the record shows that the petitioner is a victim of the domestic violence incident involving her partner, the issue here is whether the petitioner was also culpable for the criminal activity, and we find there is sufficient evidence showing that the petitioner was also identified as a culpable party and a perpetrator during the incident in question here. The record lacks any evidence[2] that law enforcement officials or the criminal court identified the petitioner as the only victim at any time during the course of their investigation or prosecution of the criminal activity. In fact, as of the date of this decision, the charges of disorderly conduct against both the petitioner and her partner have been dropped, and thus, the decision to not prosecute the petitioner does not serve as a clear indicator that she was the sole victim. Any determination on our part that the petitioner was somehow less culpable than her partner, or not culpable at all, because the latter's criminal proceedings lasted longer, requires impermissible suppositions unsupported by the record.

Accordingly, based on the record, the evidence demonstrates that the petitioner was in part culpable for the domestic violence offense investigated and prosecuted, and she has not shown otherwise. The petitioner, therefore, has failed to establish that she is a victim of qualifying criminal activity, as defined at 8 C.F.R. § 214.14(a)(14).

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.

[2] The petitioner's reliance on letters from the clinics where she obtained counseling, as evidence that she was not culpable of domestic violence, is misplaced. These letters can be given little probative weight, as they do not address whether the certifying agency or the court determined whether or not the petitioner was culpable for the offense that was investigated and prosecuted, and they rely on facts asserted by the petitioner. Further, some of the facts in the letters are inconsistent with the petitioner's own statement and the police report for the August 2012 incident. For instance, LMFT, of the indicated that the petitioner reported that M-B- destroyed her computer when she was talking to her friends and that M-B- threatened to break the cellphone when she tried to call the police. However, according to her written statement, the petitioner was on the computer with her mother when M-B- threw the laptop, and she grabbed the cellphone to ask her neighbor if she could spend the night. A letter from MSW, indicated that the petitioner was charged with disorderly conduct for "screaming" during a fight with her boyfriend, whereas the police report indicates that the petitioner's arrest stemmed from her admission to pushing her partner and throwing his television remote control. There is also no indication that the petitioner ever reported the abuse by M-B- that she now claims to police following the August 2012 incident or at any other time.