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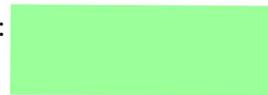
U.S. Citizenship  
and Immigration  
Services



Date: JAN 30 2015

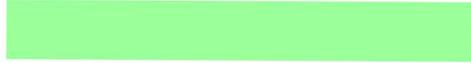
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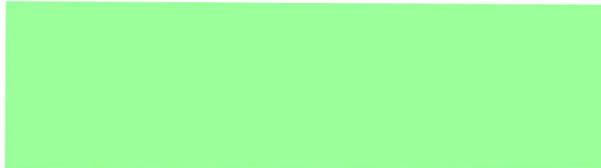
PETITIONER:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

A small handwritten mark or initials in the left margin.

**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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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) 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 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 instant appeal and submits a brief and a statement from the certifying official 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 --

- (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[.]

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. . . .;

\* \* \*

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 El Salvador who claims to have last entered the United States in September 2001. 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 (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), on February 5, 2013. On December 27, 2013, the director issued a Request for Evidence

(RFE) establishing that the petitioner was helpful in the investigation or prosecution of the criminal activity perpetrated against her. The petitioner responded to the RFE with additional evidence, including an updated personal statement and certificates of completion for a domestic violence program and a parenting class. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on March 12, 2014, concluding that the petitioner had not established the helpfulness requirement under section 101(a)(15)(U)(i)(III) of the Act. The petitioner appealed the denial of the Form I-918 U petition.

*Claimed Criminal Activity*

The petitioner, in her personal statement, indicated that she had been in an abusive relationship with A-C-<sup>1</sup>, the father of her son, since 2007. The petitioner detailed the events of July [REDACTED] when the petitioner confronted A-C- about a woman that was at the home with A-C-. The petitioner stated that A-C- got increasingly angry and began throwing things and kicking the door and the walls. Later in the day, A-C- again became angry and jealous when a man at the store they were visiting started talking to the petitioner. He continued to argue with the petitioner in the car, and at one point, he grabbed the petitioner by her cheeks and head butted her on her forehead. She stated that her forehead swelled up and turned purple. When they arrived at A-C-'s friend's house, the petitioner grabbed her son, snuck out of the house, and took the bus to the police station. The petitioner relayed the incident details to a social worker at the station, and then she spoke to the police. The police filled out a report and took pictures of her injury. The petitioner stated she feared A-C-'s reaction, and was scared he would get her deported if she pressed charges against him. About one week after the incident, social workers arrived at her home to discuss the contents of the police report. The petitioner stated she confirmed the truth of the report to them and was cooperative with the social workers, answering all their questions. In an updated statement, the petitioner asserted that she completed parenting, domestic violence, and mental health therapy courses and has cooperated with the requests of the certifying agency. She further stated that the perpetrator, A-C-, was asked to move out, that she does not have any contact with him, and she does not allow him unmonitored visits with their son. A police report in the record confirms that the petitioner reported the July [REDACTED] incident to police. However, it also indicates that the petitioner had second thoughts about filing the report and was initially very reluctant to give any information. According to the reports, she repeatedly told the police officer that she did not want to file a report and that she did not want A-C- to be arrested.

The Form I-918 Supplement B that the petitioner submitted below was signed on August 6, 2012, by [REDACTED] Supervising Children's Social Worker, [REDACTED] 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 domestic violence. In Part 3.3, the certifying official cited section 273.5 of the California Penal Code, which relates to the offense of Spousal Abuse, 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

<sup>1</sup> Name withheld to protect individual's identity.

that the petitioner is a victim of domestic violence, that the perpetrator struck the petitioner's head with his head, inflicting pain, swelling and bruising to the petitioner's head, and that the perpetrator had also pushed the petitioner previously. 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 sustained a three inch contusion on her forehead. 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 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 was cooperative with DCFS in the investigation of the crime and gave a complete statement to the agency's social worker.

On appeal, the petitioner submitted an updated statement from the certifying official, dated April 8, 2014, indicating that although the petitioner was reluctant to file a police report against the perpetrator, she fully cooperated with DCFS by providing information about the abuse during interviews; participating in monthly visits, team-decision making meetings, and family preservation services; and complying with all court orders. The certifying official further noted that DCFS works closely with law enforcement and the District Attorney's office to file criminal charges against parents where appropriate. She also stated that, in the instant case, the petitioner has specific knowledge and details about the criminal activity at issue here and that she was, is being, or is likely to be helpful in the detection, investigation or prosecution of the criminal activity.

#### *Analysis*

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the director's decision to deny the petition based on the stated grounds.

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

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 DCFS 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. Although the police incident report in the record indicated that the petitioner was initially hesitant to file a police report and did not want the perpetrator to be arrested, the record shows that the petitioner did in fact fully relay the events of criminal activity to the police despite her reluctance, and that she subsequently cooperated fully with the investigation of the incident conducted by DCFS, which is the certifying agency in this matter.<sup>2</sup> Additionally, the updated statement from the certifying official submitted on appeal confirms that the petitioner was helpful and cooperated with DCFS in its investigation of domestic violence in the petitioner's home to ensure the safety of her child in accordance with its agency's goal of providing protective services to children. The petitioner's initial reluctance to file charges against the perpetrator before a separate law enforcement agency does not negate the petitioner's ongoing helpfulness in the investigation or prosecution of that perpetrator conducted by the certifying agency. 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 she 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 March 12, 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), and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 212(a)(2)(A)(i)(I) (crimes involving moral

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<sup>2</sup> Section 214(p)(1) of the Act requires that the petitioner file a certification from the *certifying agency investigating qualifying criminal activity* 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. Here, that agency is DCFS, which certified the petitioner as being helpful in its investigation.

turpitude). 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 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.