

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 30 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,

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 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, concluding that although the petitioner appeared to be a victim of sexual assault of a minor, she did not establish that she was a victim of qualifying criminal activity because she failed to show that the claimed criminal offense was ever investigated or prosecuted, and consequently, she was also unable to meet the eligibility criteria for U nonimmigrant classification at sections 101(a)(15)(U)(i)(1), (2), and (3) of the Act. On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, 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[.]

The eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act are further explicated in the regulation at 8 C.F.R. § 214.14(b).

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 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.

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 as a minor in February, 2002, without admission, inspection or parole. 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 March 29, 2013. On December 4, 2013, the director issued a Request for Evidence (RFE) for the petitioner to establish that she was a victim of qualifying criminal activity and that she had reported the qualifying crime of sexual assault asserted on the Form I-918 Supplement B for investigation or prosecution. The petitioner responded to the

RFE with a brief and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition on April 10, 2014. The petitioner timely appealed the denial.

On appeal, the petitioner contends that she has demonstrated that she is a victim of the qualifying crime of sexual assault and satisfies the eligibility requirements for nonimmigrant U visa status under section 101(a)(15)(i) of the Act.

Claimed Criminal Activity

In her declarations, the petitioner recounted her relationship with E-S-¹, the father of her son, who she started dating in Mexico when she was 12 years old. She left home to live with E-S-, and when she tried to return home to her mother, her mother refused to take her back. The petitioner stated that E-S- became abusive and violent over time. In September 2001, E-S- brought the petitioner to the United States where she has remained except for a brief visit to Mexico in February 2002. The petitioner became pregnant with E-S-'s child and gave birth to her son in March [REDACTED], shortly after her fourteenth birthday. The petitioner recounted how E-S- continued to hit her and broke her nose on two occasions, including after their son's birth. She asserted that between 2001 and 2003, E-S- also sexually abused her a few times a week and would regularly rape her when she refused his sexual overtures, even during her pregnancy. The petitioner explained that her inability to speak English and lack of resources left her unable even to know where to seek help. She and her son often had no food and other necessities. In August [REDACTED] child protective services began investigating the conditions in her home and she and her son were eventually removed from the home and placed with foster parents. The petitioner has since moved on with her life and has successfully cared for herself and her son. However, she stated that she often dwells on the abuse she suffered and its ongoing impact on her life. She continues to feel scared and threatened all the time and has feelings of worthlessness that have hindered her ability to accomplish her goals.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Director, Permanency & Conservatorship, Texas Department of Family and Protective Services (DFPS), [REDACTED] Texas (certifying official), on October 2, 2012. The certifying official checked off the boxes for sexual assault and "other" in Part 3.1 of the form, as the criminal activities of which the petitioner was a victim. In Part 3.3, the certifying official did not set forth a corresponding criminal statute for the crime committed against the petitioner that was investigated or prosecuted.² In a separate attachment, the certifying official stated that DFPS "has no authority and makes no representations as to any criminal law violation that may be implicated by conduct" it has investigated. In response to the questions at Parts 3.5 and 3.6, which ask for brief descriptions of the criminal activity being investigated or prosecuted and of any known or documented injury to petitioner, the certifying official indicated in the attachment that DFPS investigated

¹ Name withheld to protect the identity of the individual.

² The certifying official provided only the regulatory codes through which it derives its own authority to investigate alleged abuse, neglect and exploitation of children, the elderly and the disabled, and to provide child protective services. See Texas Human Resources Code § 40.002; Texas Family Code § 261.301.

and found that the petitioner had been neglected by her mother. The certifying official also noted that at the time it intervened in her case, the petitioner and her one-year-old son were living in unsanitary and unsafe conditions with the child's father, who was a sixteen-year-old delinquent. The certifying official stated that the petitioner had given birth shortly after her fourteenth birthday. In response to Part 4.5 regarding the petitioner's helpfulness, the certifying official indicated that the petitioner cooperated and aided DFPS in its investigation, ended her relationship with the father of her child when she entered foster care, and remained under DFPS conservatorship until she aged out of foster care.

Analysis

The AAO conducts appellate review on a *de novo* basis. All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. 214.14(c)(4). We determine, in our sole discretion, the evidentiary value of the evidence submitted in the record. *See* 8 C.F.R. § 214.14(c)(4).

Although the director ultimately concluded that the petitioner had failed to demonstrate that she was a victim of qualifying criminal activity, the director also indicated that the petitioner "appeared to be a victim of Sexual Assault of a Minor."³ Upon *de novo* review, we withdraw the director's determination, insofar as it incorrectly suggests that the petitioner is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, namely sexual assault.

Although Part 3.1 of the Form I-918 Supplement B indicates that the petitioner was a victim of sexual assault and "other" offense(s), the certifying official failed to cite the corresponding statutes for sexual assault or any other criminal offenses that were in fact investigated or prosecuted by the certifying agency. Further, in describing the criminal activity committed against the petitioner at Part 3.5, the certifying official never asserted that DFPS, the certifying agency, detected,⁴ investigated or prosecuted the offense of sexual assault. Likewise, records of DFPS' investigation in the file do not show that it ever detected or investigated sexual assault in the course of its investigation. To the contrary, the certifying official specified in the attachment to the certification that DFPS investigated and found that the petitioner had been neglected by her mother and that she had been taken into DFPS custody "due to her living conditions, lack of parental/adult supervision, her youth and inability to properly care for her child," and that DFPS "makes no representation as to any criminal law violation that may be implicated" by conduct it has investigated. Accordingly, the record fails to establish that the petitioner is a victim of sexual assault or other qualifying criminal activity.

³ The director indicated that since the petitioner's child was born when she was 14 years old, the petitioner appeared to be a victim of sexual abuse of a minor. However, the director then concluded that because the sexual assault was never investigated or prosecuted, it was not a "qualifying" criminal activity.

⁴ The term "investigation or prosecution," as used in section 101(a)(15)(U)(iii) of the Act, also refers to the "detection" of a qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5).

In her brief on appeal, the petitioner contends that the certifying official's reference in the Form I-918 Supplement B to the petitioner giving birth as a minor, just after her fourteenth birthday, demonstrates that DFPS "detected" conduct that constitutes the criminal offense of sexual assault of a minor, as defined under Texas criminal law. Brief on Appeal at 4. However, our review of the certification and DFPS records in the file indicate that the references to the petitioner's young age at the time of her son's birth are an explanation for the petitioner's inability to provide proper care for her child. Furthermore, the inquiry here is not a fact-based one into whether conduct identified by DFPS in its investigation may or may not constitute a criminal offense that is a qualifying criminal activity. Rather, our inquiry is into whether the DFPS certified the petitioner as being a victim of qualifying criminal activity in the Form I-918 Supplement B, as supported by the record as a whole. While the petitioner is correct that a qualifying criminal activity may occur during the commission of non-qualifying criminal activity, however, the certifying official must provide evidence that the qualifying criminal activity was detected, investigated or prosecuted. Here, as discussed, the certifying official's statements in the certification and attachment do not indicate that DFPS ever detected, investigated or prosecuted the crime of sexual assault. Moreover, we note that the certifying agency's own regulations direct it to conduct a joint investigation with law enforcement, "if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or *sexual abuse* of a child that could result in . . . serious harm to the child." Texas Family Code § 261.301(h) (Sampson & Tindall 2009) (emphasis added). Yet, nothing in the Form I-918 Supplement B, or in the DFPS records that were submitted by the petitioner, indicates that a mandatory joint investigation with law enforcement was implicated due to allegations of "sexual abuse" or other such similar conduct against the petitioner during DFPS' investigation.

Accordingly, notwithstanding the certifying official marking the box for "sexual assault" in Part 3.1, the petitioner has failed to establish that she was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.⁵

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Possession of Credible or Reliable Information Establishing Knowledge Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

⁵ 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).

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

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). The petitioner has failed to establish that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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