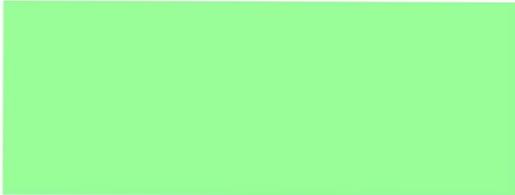




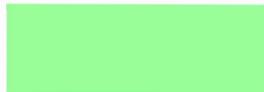
U.S. Citizenship  
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Services

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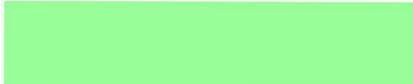


Date: **MAR 11 2015**

Office: VERMONT SERVICE CENTER

File: 

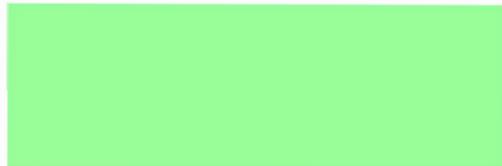
IN RE:

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:

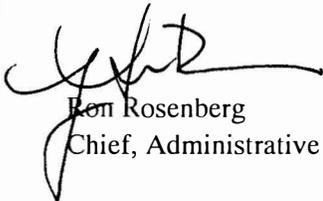


INSTRUCTIONS:

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.

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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<sup>1</sup> and submits a brief and additional evidence in support of the appeal.

*Applicable Law*

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to:

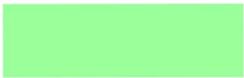
(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (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; . . .

<sup>1</sup> The petitioner attempted to jointly appeal the denials of her petition and the Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A), on behalf of her derivative beneficiary on one Form I-290B, Notice of Appeal or Motion. A separate appeal form must be filed for each of the denied petitions.



felonious 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 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 Mexico who claims to have last entered the United States in 1991 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 U Nonimmigrant Status Certification (Form I-918 Supplement B) and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on September 6, 2011. The director subsequently issued a Request for Evidence (RFE), including: a statement from the certifying official establishing that the petitioner was helpful in the investigation or prosecution of the criminal activity perpetrated against her, and criminal records related to the petitioner's arrest for assault on June [REDACTED]. The petitioner responded to the RFE with additional evidence, including an updated personal statement and a disposition of her arrest. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on June 2, 2014, concluding that the petitioner had not established that she satisfied 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 statements, recounted being the victim of assault in [REDACTED] by I.B.,<sup>2</sup> her ex-husband and the father of her children. She stated that I-B- wanted to kill her and her four year old daughter and that he chased her around the apartment with a gun. Her children were present in the home during this time. The petitioner managed to escape the building with her children and hid by a car while her older children ran to the neighbors, who called the police. The petitioner believes I-B- would have killed her otherwise and stated that there had been other incidents of threats and abuse by the perpetrator. The police incident reports in the file indicate that this incident occurred on April [REDACTED] and that the perpetrator was charged with committing aggravated assault with a deadly weapon. The report also shows that I-B- broke into the petitioner's apartment and hid in her closet, waiting for her to arrive home. Another incident report in the record shows that the petitioner had previously contacted police a couple weeks earlier, because I-B- had been following her and harassing her on the phone after they separated several months earlier.

The Form I-918 Supplement B that the petitioner submitted below was signed on April 25, 2011, by [REDACTED] Chief, Family Violence Division, [REDACTED] District Attorney's Office, in [REDACTED] Texas (certifying official). The Form I-918 Supplement B indicates the petitioner was a victim of domestic violence and felonious assault. In Part 3.3, the certifying official cited section 22.01 of the Texas Penal Code, which relates to the offense of Assault, 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 when the petitioner returned home on April [REDACTED] the perpetrator jumped out of the closet and threatened the petitioner with a gun. 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

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

and/or prosecution of the criminal activity; (3) has been requested to provide further assistance in the investigation and/or prosecution; and (4) 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 in reporting the crime and during investigation, but indicated that she could not be located during the criminal hearing and that the criminal case was pled down to deferred probation.

*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 the certifying agency 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/or 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 certifying official indicated that the petitioner could not be located for the criminal hearing, there is no evidence to show that the petitioner at any point refused or failed to provide information or assistance after having been reasonably requested by law enforcement officials to do so. The record shows that law enforcement officials did not locate the perpetrator until several months after the criminal offense, during which time the petitioner moved to a different state out of fear for her and her family's safety. Although the petitioner erred in failing to provide her new contact information to law enforcement officials, there is nothing to show that officials requested that she do so in the event she relocated. Further, as the petitioner explains in her statement, the period after the assault was understandably a traumatic period for her, compounded by a lack of understanding of the law and of the law enforcement's ability to keep her and her family safe. Added to these fears, during the perpetrator's criminal prosecution, the petitioner was also pregnant with her fourth

child with her now current husband and suffered some complications as a result of having undergone gallbladder surgery during the pregnancy. Finally, although charges against the perpetrator were reduced, the record shows that he was in fact convicted of Terroristic Threat-Family Violence.

On appeal, the petitioner also submits a statement from [REDACTED] the Victim Assistance Coordinator of the [REDACTED] Texas, Police Department, which investigated the [REDACTED] incident. Ms. [REDACTED] confirms that the petitioner cooperated with the police department for the investigation and prosecution of the perpetrator and provided a written statement to the designated detective on the case.

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 the petitioner 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. The director indicated that the petitioner was inadmissible under section 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). 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.

(b)(6)



*NON-PRECEDENT DECISION*

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**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.