



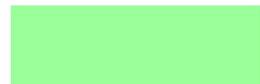
U.S. Citizenship
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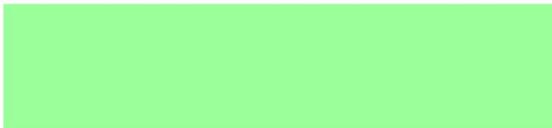


Date: **MAR 17 2015** Office: VERMONT SERVICE CENTER

FILE:

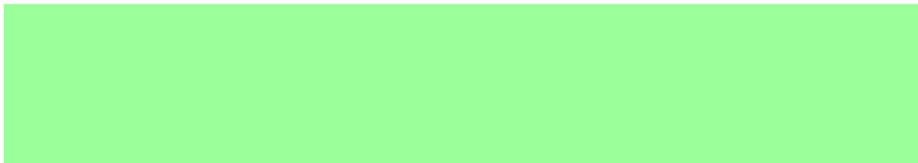


IN RE: Petitioner:



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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 failed to establish that she was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a brief.

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[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The eligibility requirements for U nonimmigrant classification are further explained 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[.]

* * *

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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 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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

* * *

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) 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
- (ii) A Federal, State, or local judge.

* * *

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 initially entered the United States without inspection in May 1992 by using a false permanent residency card bearing her name. She stated that she was voluntarily removed from the United States in January 1998 and returned to the United States in May 1998, entering without inspection, admission, or parole. In her declarations, the petitioner stated that, on various occasions, her husband slapped and pushed her and pinched her arms and legs and pulled her hair. Her husband also threw objects such as a screwdriver, his cell phone, and a watch at her which made impressions in the wall. On one occasion, her husband broke her car window, hit her in the head, and tore the earring out of her ear. Later that night, he pinned her in bed and began hitting her in the head, only stopping when his brother's wife came up the stairs. He also perpetrated sexual abuse against her. Her husband also threatened to kill her on multiple occasions including by showing her various tools and asking her by which she preferred to die and threatened to have her deported, to divorce her, and take the children and move away from her.

On March 11, 2011, the petitioner called the police after her husband punched her in the jaw. The punch caused a bridge on the left side to become detached, her lip bled, and her jaw hurt. The police involved the Illinois Department of Children and Family Services because children were present during the incident, and the petitioner states that she cooperated with that agency as well as the police. She obtained an order of protection against her husband after this incident.

The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by Associate Circuit Court Judge [REDACTED] of the [REDACTED] Municipal District Circuit Court [REDACTED] Illinois (certifying official) on January 6, 2012. The certifying official indicated that the criminal activity of domestic violence occurred in 2011, and that the petitioner was helpful in the investigation of the qualifying domestic violence criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of qualifying criminal activity.

Based upon the information in this Form I-918 Supplement B, on September 11, 2013, the director issued a Request for Evidence (RFE) questioning whether the petitioner continued to be helpful in the investigation and/or prosecution of qualifying criminal activity. Counsel responded to the RFE with relevant police reports and a copy of the documents and hearing transcript for the Order of Protection issued against her husband. The certifying official added that the petitioner attended all

of the court hearings and provided testimony in pursuit of the protection order. The police report stated that the petitioner refused to sign complaints against her husband because she was worried about the financial repercussions.

The director subsequently denied the petition for lack of helpfulness because the petitioner pursued the order for protection but refused to pursue criminal charges against her husband. Specifically, the decision states, “obtaining a protection order, in itself, does not qualify as reporting criminal activity to law enforcement. It also does not demonstrate helpfulness to law enforcement nor does it establish that you possess information about criminal activity.”

Analysis

We conduct appellate review on a *de novo* basis. Based upon the evidence, we withdraw the director’s determination that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity, and find that she has met the helpfulness element of section 101(a)(15)(U)(i)(III) of the Act.

U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity. Section 214(p)(1) of the Act states that certifying authorities include prosecutors and judges. The regulation at 8 C.F.R. § 214.14(a)(3)(ii) further clarifies that certifying officials include state and local judges. The plain language of the statutory provisions indicate that helpfulness may be provided to any listed investigative body and is not limited to just police or law enforcement agencies. The qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act are not related to any specific state laws, but instead are written broadly.¹ In issuing the order of protection, the judge in this case determined through his investigation of the facts that the qualifying crime of domestic violence had occurred. The director’s statement that “obtaining a protection order, in itself, does not qualify as reporting criminal activity” misstates the applicable standard and is hereby withdrawn. The petitioner’s testimony and

¹ In its Preamble to the U visa rule, USCIS stated:

The statutory list of qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. § 1101(a)(15)(U)(iii), is not a list of specific statutory violations, but instead a list of general categories of criminal activity. It is also a non-exclusive list. Any similar activity to the activities listed may be a qualifying criminal activity. This interim rule adopts the statutory list of criminal activity and further defines what constitutes “any similar activity.” See new 8 CFR § 214.14(a)(9). The rule provides that for a criminal activity to be deemed similar to one specified on the statutory list, the similarities must be substantial. USCIS bases this definition on the fact that the statutory list of criminal activity is not composed of specific statutory violations. Instead, the criminal activity listed is stated in broad terms. The rule’s definition of “any similar activity” takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable.

participation in the hearing to obtain her order of protection against her husband is cooperation with a certifying agency under the applicable statutes and regulations. The certifying official indicated that the petitioner did not unreasonably refuse to provide continued assistance in the investigation or prosecution of the criminal activity, and there is no evidence that after the petitioner's initial cooperation, she was requested to provide further assistance to the certifying agency and refused to cooperate. As a result, she cooperated with a certifying agency and fulfilled the helpfulness element of section 101(a)(15)(U)(i)(III) of the Act.² The preponderance of the relevant evidence of record demonstrates that the petitioner has been helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act, and that she did not refuse to provide continued assistance reasonably requested. The director's contrary determination is withdrawn.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the 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 determined the petitioner was inadmissible under sections 212(a)(6)(A)(i), 212(a)(6)(C), 212(a)(9)(B)(i)(I), and 212(a)(9)(C)(i)(I) of the Act without analysis and 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 January 29, 2014. On her Form I-918, the petitioner stated that she has no current immigration status in the United States. Because the petitioner has overcome the basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

² Another error in the director's decision is the statement that "the certification only indicates that you helped with the protection order; as you refused to press charges for the crime itself." According to the police reports, when officers arrived on the scene, they interviewed the petitioner, who provided them with the details of the assault against her. Although the reports indicate that the petitioner refused to sign the complaint against her husband, the director mischaracterized this information as unreasonable refusals to assist law enforcement in the investigation or prosecution of the certified crimes. The police report specifies that the petitioner refused to sign a complaint against her husband because she relies upon income from her husband's job and did not want to negatively affect the financial wellbeing of her household, which includes her children. The police reports also contain no information that the officer(s) who interviewed the petitioner found her refusal to sign the complaint unreasonable or that such refusal would negatively impact an investigation into or prosecution of the criminal activity.

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 as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The director's June 2, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application 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.