

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 24 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 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 because the petitioner did not establish that she was the victim of qualifying criminal activity and she, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, the petitioner submits a brief, and copies of documents already included in the record.

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

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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

* * *

(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.

* * *

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 . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her

petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(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. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 February 2004, without admission, inspection or parole. The petitioner filed the instant 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 April 23, 2012. On May 23, 2013, the director issued a Request for Evidence (RFE) that the petitioner, in part, is the victim of a qualifying criminal activity. The petitioner responded with additional evidence, including which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition.¹ The petitioner timely appealed the instant denial of the Form I-918 U petition. On appeal, the petitioner submits a brief and reiterates her assertion that she is the victim of domestic violence.

¹ The record reflects that the director initially denied the Form I-918 U petition on April 8, 2014 because the petitioner failed to establish that she was the victim of a qualifying criminal activity. The petitioner timely filed a motion to reopen and a motion to reconsider the denial, asserting that the criminal activity for which she was a victim of should be considered a domestic violence crime. The director granted the motion, reopened the decision, but ultimately determined that the petitioner failed to overcome the grounds of the April 8, 2014 denial decision.

Claimed Criminal Activity

In her statements dated April 19, 2012 and May 4, 2012, the petitioner recounted that her husband's ex-wife (perpetrator) came to her home to drop off the child she had with her husband. An argument ensued and the perpetrator pushed her and hit her in the face in the presence of her husband and her children. The petitioner stated that the perpetrator wanted to hit her again, but she was restrained by her husband. The petitioner further stated that the perpetrator also verbally abused her and threatened to report her illegal status to immigration. The petitioner called the police, but before the police arrived, the perpetrator had left her home. The police took her statement. The petitioner further stated that if her husband had not intervened, the perpetrator may have hit her again and that she was "terrified for days" after the incident.

The Form I-918 Supplement B was signed by [REDACTED] Police Officer, [REDACTED] Tennessee Police Department (certifying official) on December 23, 2011. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as assault. In Part 3.3, the certifying official listed the statutory citation for the criminal activity that was investigated or prosecuted as Tennessee Code Annotated (TCA) § 39-13-101 – assault.² When describing the criminal activity being investigated or prosecuted, the certifying official indicated that "[the petitioner] was hit in the face by [the perpetrator]. At part 3.6, which requires the certifying official to provide any known or documented injury to the victim, she indicated that red a mark was seen on the side of the petitioner's face.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

The incident report from [REDACTED] Tennessee Police Department dated February 18, 2008, indicates that the crime investigated was simple Assault under TCA 39-13-101. The Form I-918 Supplement B indicates that the crime investigated was TCA 39-13-101 – Assault. Assault is not specifically listed as a qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the crimes investigated must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

² "[A] person commits assault who: (1) intentionally, knowingly or recklessly causes bodily injury to another; (2) intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative" Assault is a Class A misdemeanor unless the offense is committed under subdivision (a)(3), which is a Class B misdemeanor. Tenn. Code Ann. § 39-13-101 (West 2014).

On appeal, the petitioner claims that based on the facts of the case, the history of threats and harassment by the perpetrator, and the child she and the perpetrator share in common based on her marriage to the child's biological father, she is a victim of domestic violence assault. "[A] person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim." Tenn. Code Ann. § 39-13-111. As used in this section, "domestic abuse victim" means any person who falls within the following categories: (1) Adults or minors who are current or former spouses; (2) Adults or minors who live together or who have lived together; (3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context; (4) Adults or minors related by blood or adoption; (5) Adults or minors who are related or were formerly related by marriage; or (6) Adult or minor children of a person in a relationship that is described in subdivisions (a)(1)-(5). Tenn. Code Ann. § 39-13-111 (West 2014).

In this case, the crime of which the petitioner was a victim did not involve the requisite relationship between the victim and the perpetrator to make it a domestic violence crime under Tennessee law. Tennessee law provides a specific definition of "domestic abuse victim." The petitioner was assaulted by the mother of her step-child and the two women are not parties in a relationship described at TCA § 39-13-11. In addition, the Form I-918 Supplement B identified the crime of which the petitioner was a victim as simple assault. There is no evidence in the record that the certifying official detected, investigated or prosecuted domestic violence assault or any other qualifying crime, such as felonious assault. Accordingly, as simple assault is not a qualifying crime, the petitioner has not demonstrated her victimization under section 101(a)(15)(U) of the Act.

Beyond the director's decision, the petitioner did not submit a properly certified Form I-918 Supplement B.³ The petitioner filed her Form I-918 U petition on April 23, 2012, and was required to submit a properly executed Form I-918 Supplement B as initial evidence. See 8 C.F.R. § 214.14(c)(2)(i). The term *properly executed* includes a Form I-918 Supplement B that is signed by a certifying official. According to the regulation at 8 C.F.R. § 214.14(a)(3)(i) a *certifying official* is either 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."

The Form I-918 Supplement B submitted by the petitioner is signed by [REDACTED] Police Officer, [REDACTED] Tennessee Police Department. The head of the certifying agency is [REDACTED] Chief, [REDACTED] Tennessee Police Department. The petitioner has not submitted evidence from Chief [REDACTED] specifically designating Officer [REDACTED] as the certifying official who is authorized to issue U nonimmigrant status certification on behalf of the [REDACTED] Tennessee Police Department. Nor has she provided evidence to show that Officer [REDACTED] is employed in any supervisory capacity by the [REDACTED] Tennessee Police Department. Such evidence is required by regulation at 8 C.F.R. § 214.14(a)(3)(i) when the Form I-918 Supplement B is signed by someone other than the head of the certifying agency. Furthermore, the regulation at 8 C.F.R. § 103.2(b)(4) requires that documents submitted in support of a petition must be in the original; an original signature is also required. See 8 C.F.R. § 103.2(a)(2). In this case, the petitioner

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

submitted a photocopy of the Form I-918 Supplement B. As the petitioner has failed to provide a properly executed Form I-918 Supplement B, she has failed to meet the statutory requirements at section 214(p)(i) of the Act and the regulations at 8 C.F.R. § 214.14(c)(2)(i). Based on the above discussion, the petitioner is ineligible of U classification pursuant to section 101(a)(15)(U) 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). Here, that burden has not been met that burden. Accordingly, the appeal will be dismissed.

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