



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Y-P-P-R-

DATE: NOV. 5, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i). The Director, Vermont Service Center, revoked approval of the Petitioner's Form I-918, Petition for U Nonimmigrant Status because the certifying agency withdrew the U Visa Certification Form. The matter is now before us on appeal. The appeal will be sustained.

I. 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; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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).

Pursuant to the regulations, the Petitioner also must show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007).

Regarding the revocation of approved petitions for U nonimmigrant status, the regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

(2) *Revocation on notice.*

(i) [U.S. Citizenship and Immigration Services (USCIS)] *may revoke* an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A)The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing

(Emphasis added). 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 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

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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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Costa Rica who claims to have entered the United States on April 30, 2001 without inspection, admission or parole. In her declaration, the Petitioner stated that, in 2005, she met a man who perpetrated domestic violence against her which forms the basis of her Form I-918. The Petitioner obtained a Personal Protection Order against her ex-boyfriend on [REDACTED] 2006. After an incident on [REDACTED] 2007, a neighbor called the police at the Petitioner's request and the Petitioner's ex-boyfriend was arrested. The police took photographs of the Petitioner's injuries, and she fully cooperated with the police investigation. On September 12, 2007, the Petitioner received a subpoena to appear as a witness in the criminal case against her ex-boyfriend on [REDACTED] 2007. Although the Petitioner appeared at the scheduled hearing, her ex-boyfriend did not appear and the case was continued.

The Petitioner stated that, in March 2010, her children flew to Costa Rica to visit family and she traveled to New Jersey to visit her uncle. The Petitioner left her car at her apartment, and her roommate checked the mail and maintained the apartment in her absence. The Petitioner's roommate told her at the end of June 2010 that a policeman had left a business card on her car; the Petitioner stated that she tried to call the phone number on the business card repeatedly but did not get a response. Next, the Petitioner instructed her roommate to e-mail the address on the card. The Petitioner's roommate received a response from the police via email, but did not notify the Petitioner. As a result, the Petitioner missed the scheduled criminal hearing in [REDACTED] 2010, and charges were dismissed against her ex-boyfriend. The e-mail from the police, which is in the record, dated [REDACTED] 2010, states that the police had a subpoena to serve on the Petitioner to secure her attendance at a [REDACTED] 2010 court hearing.

The Petitioner filed the instant Form I-918 on February 11, 2008. The Director approved the Form I-918 on July 23, 2009. On March 28, 2012, the certifying official sent USCIS a letter stating that the Petitioner "was aware of the [REDACTED] 2010] court date and the need for her to appear," but that she did not do so. The letter also stated that no subpoena had been served on the Petitioner. Based on this letter, the Director issued a Notice of Intent to Revoke (NOIR) approval of the Form I-918 on October 10, 2013. When responding to the NOIR, the Petitioner submitted a new declaration concerning the miscommunication regarding the [REDACTED] 2010 court hearing, witness statements, and a new Form I-918 Supplement B signed by the Undersheriff for [REDACTED], Michigan Sheriff's Office attesting to the Petitioner's helpfulness. The Director found the response insufficient and revoked approval of the Form I-918 pursuant to 8 C.F.R. § 214.14(h). The Petitioner timely appealed the revocation of her Form I-918.

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III. ANALYSIS

De novo review of the record, as supplemented on appeal, demonstrates that the approval of the Petitioner's Form I-918 was revoked in error.

The original Form I-918 Supplement B was signed by [REDACTED] of the [REDACTED], Michigan Prosecuting Attorney Office (certifying official). The Form I-918 Supplement B indicated in Part 4 that the Petitioner was helpful to the investigation. In Part 4.5, the certifying official specifically noted that the Petitioner and her son appeared for the initial [REDACTED] 2007 court date as requested. The letter from the certifying official noted that the Petitioner was not served with a subpoena to appear in court on [REDACTED] 2010. Instead, the letter cites to "information in [the] file that indicates that [the Petitioner] was aware of the court date and the need . . . to appear." The certifying official does not specify the information in the file, but presumably, he is referring to the e-mail sent from [REDACTED] of the [REDACTED] Sheriff's Office to the Petitioner three days prior to the re-scheduled court date, that was actually received and deleted by the Petitioner's roommate and of which the Petitioner was unaware.

In response to the Director's NOIR, the Petitioner submitted a second Form I-918 Supplement B by a second certifying agency, the [REDACTED] Michigan Sheriff's Office indicating in Part 4 that the Petitioner continued to be helpful in the matter. In addition, the [REDACTED] Sheriff Incident Report indicates that the Petitioner cooperated in the investigation and referred to the Petitioner's Personal Protection Order, obtained on [REDACTED] 2006 and renewed the following year.

In the revocation decision, the Director stated that the Petitioner's U status was being revoked because the certifying agency withdrew its certification, and the Petitioner did not demonstrate her continuing assistance in the prosecution of her abuser. On appeal, the Petitioner states that she would have appeared for the [REDACTED] 2010 court date had she been notified of it, but that she did not get notice of the hearing. The Petitioner notes that she was never served with a subpoena and, even if she had received notice of the hearing via the e-mail from [REDACTED] it was sent only three days prior and she was halfway across the country and her son, another necessary witness, was out of the country. The Petitioner claims that, because revocation is discretionary and not mandatory, USCIS should favorably exercise discretion given the Petitioner's circumstances and lack of notice. The Petitioner notes that Michigan law requires service of a subpoena at least two days prior to a witness's presence being required and that no subpoena was ever served on her. She further notes that she received a subpoena 30 days prior to the [REDACTED] 2007 hearing and reasonably expected similar notice for the re-scheduled hearing. In addition, she states that the [REDACTED] Sheriff, a recognized certifying agency, still found her helpful in the investigation regardless of her inability to appear for the [REDACTED] 2010 court date.

In response to the Director's NOIR, the Petitioner submitted a letter from her roommate, [REDACTED] apologizing for the miscommunication and explaining that her poor English ability meant that she did not understand the e-mail sent from [REDACTED]. The text of the e-mail sent to the police from the Petitioner's e-mail address reads: "Hello! do you lookig for me, you can send me mail because I call the number you live in my car but Icannot findyou. [sic]" The text of the e-

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mail indicates low English literacy and the statement from the roommate is written in Spanish where she indicates that she did not understand the e-mail she received from the police in response to her email. [REDACTED] states that she deleted the e-mail and informed the Petitioner that she should again call the police but she did not inform the Petitioner of the looming court date.

The revocation of an approved petition for U nonimmigrant status based upon a withdrawal of a law enforcement certification is not mandatory, but discretionary. 8 C.F.R. § 214.14(h)(2)(i). In the March 28, 2012 letter withdrawing the law enforcement certification, Chief Assistant Prosecutor [REDACTED] affirms that the Petitioner never received a subpoena for the trial. U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity, and requires a victim's ongoing assistance through the U adjustment of status phase if such assistance is "reasonably requested." 8 C.F.R. §§ 214.14(b)(3); 245.24(b)(5),(e). Here, the evidence in the record establishes the Petitioner's helpfulness in the investigation by participating in the Sheriff's investigation, obtaining a Personal Protection Order and an extension of that Order, and appearing at the initial court hearing. In addition, the certifying agency did not issue a reasonable request for further assistance from the Petitioner at the [REDACTED] 2010 hearing as no subpoena was served and any notice given was only three days prior to the hearing.

It is evident from the Petitioner's credible statements and the testimony from others that the Petitioner would have participated had she received notice of the hearing. As she notes on appeal, the case could have been continued because the two key witnesses, the Petitioner and her son, were not served with a subpoena. As the Petitioner credibly explained, she and her son were not in Michigan in the days leading up to the July 1, 2010 court date and three days notice in advance of a holiday weekend was not reasonable to secure her appearance. And, despite the withdrawal of the [REDACTED] Michigan Prosecuting Attorney Office, the [REDACTED] Sheriff's Office confirmed that the Petitioner had been helpful to the investigation and prosecution of the qualifying criminal activity. The Petitioner's and her roommate's credible affidavits show that the request to appear on three days' notice was unreasonable. Accordingly, the Petitioner has satisfied the helpfulness requirement at sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act as explicated in the regulation at 8 C.F.R. § 214.14(b)(3). Consequently, the Petitioner remains statutorily eligible for U nonimmigrant classification and the Director's contrary decision shall be withdrawn.

IV. CONCLUSION

The Petitioner remains statutorily eligible for U nonimmigrant classification. The Petitioner bears the burden of proof to establish her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4).

ORDER: The appeal is sustained.

Cite as *Matter of Y-P-P-R-*, ID# 14694 (AAO Nov. 5, 2015)