



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

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

MATTER OF B-A-C-C-

DATE: NOV. 10, 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* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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;

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

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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."

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).

Pursuant to the regulations, the Petitioner also must show that, "since the initiation of cooperation, he 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). If the Petitioner "only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on May 1, 1989 without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on September 9, 2013. The Director subsequently issued a request for evidence (RFE) requesting that the Petitioner establish her helpfulness to law enforcement in investigating or prosecuting the claimed criminal activity. The Petitioner submitted additional evidence in response to the RFE which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner asserts that she was cooperative at the scene of the crime and never received a request for additional assistance from the [REDACTED] Police Department.

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III. ANALYSIS

The AAO conducts appellate review on a *de novo* basis. Upon review of the evidence in the record, the Petitioner has not overcome the burden of demonstrating her eligibility for the relief sought.

A. Appeal Filed as a Motion to Reopen and Reconsider

On the Form I-290B, Notice of Appeal or Motion, the Petitioner checked the box in Part 3.1.b (filing an appeal) and Part 3.2.f (filing a motion to reopen and a motion to reconsider a decision). The instructions on Form I-290B clearly state that only one box may be checked, indicating either a motion or an appeal is being filed, but not both. The Form I-290B also states “**if more than one box is selected, your filing will be rejected.**” (Emphasis in original.) Despite this deficiency in filing, we exercise our *sua sponte* authority to review the appeal.

B. Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, the Petitioner must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

The record contains a Form I-918 Supplement B signed by [REDACTED] (certifying official) of the [REDACTED], California Police Department, dated August 5, 2013, and relating to an incident that occurred on [REDACTED] 2010. The certifying official indicated at Part 4.2 that the Petitioner was helpful in the investigation of the qualifying 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 criminal activity. The certifying official indicated in Part 4.5 that the Petitioner stated to police officers who arrived on the scene: “I just don’t want him to go to jail . . . I think it was my fault . . . I just over reacted. I just don’t want him to go to jail . . . please don’t take him to jail.” The certifying official further stated that the case was closed and no action was brought against the alleged perpetrator in court. The Arrest Report in the record contains a narrative from the police officer who responded to the incident, who noted that the Petitioner was “uncooperative.” The police officer further noted that the Petitioner “refused to sign the confidentiality form and did not want to prosecute the suspect.”

In response to the Director’s RFE inquiring as to the Petitioner’s helpfulness to the certifying authority, she submitted a personal statement in which she stated that she was afraid to involve the authorities when her boyfriend hit her, because he threatened her family with violence and her with deportation if she made a report. She stated that, on the night when bystanders called the police, she recounted the events of the night and let the police take pictures of her injuries. She noted that she asked that her abuser not be taken to jail because he was mouthing threats to her while she spoke with police.

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Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act] . . . 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 Form I-918 Supplement B contained an inherent contradiction between Part 4.2 where the certifying official indicated that the Petitioner was helpful and the comment in Part 4.5 where the certifying official quoted the Arrest Record stating that the Petitioner begged the responding officers not to take her abuser to jail.

While we recognize that the Petitioner was under duress as the victim of domestic violence, the evidence in the record does not indicate that she was helpful to the certifying agency either at the time of arrest or thereafter. On appeal, the Petitioner states that, as it is the prosecutor’s choice to determine whether charges are brought against an accused, her statement that she did not want to press charges should not be accorded any weight. Although the decision to prosecute is the prosecutor’s, the Petitioner’s statement indicates her level of cooperation. In addition, the court records from the Superior Court of California, [REDACTED] indicate that the prosecutor was unable to go forward with the criminal case against the Petitioner’s abuser because a necessary witness could not be found. Although the records do not indicate that it was the Petitioner who was missing, the records emphasize the importance of participation by witnesses. The evidence in the record states that the Petitioner was “uncooperative” at the scene, which does not establish her helpfulness to the certifying agency. In addition, the Petitioner submitted a statement dated February 10, 2013, and claimed that she “really wanted to cooperate with the law enforcement,” but admitted that she “chose to stay quiet” instead.

The evidence in the record establishes that the Petitioner did not initiate contact with the police, was uncooperative at the scene, and “chose to stay quiet” after her abuser’s arrest. The Petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

IV. CONCLUSION

In these 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 not established that she was helpful to the certifying agency. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The appeal is dismissed.

Cite as *Matter of B-A-C-C-*, ID# 15132 (AAO Nov. 10, 2015)