



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

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

MATTER OF D-M-S-R-

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.

The Director denied the petition because the Petitioner did not establish that she was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the Petitioner submits a brief.

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

...

Sexual Assault 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 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[.]

...

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).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

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.”

(b)(6)

Matter of D-M-S-R

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have initially entered the United States on February 2, 1992 pursuant to a valid B-2 visitor's visa, which has since expired. 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 July 17, 2013. On April 2, 2014, the Director issued a request for evidence (RFE) for the Petitioner to establish that she was helpful to the investigation or prosecution of qualifying criminal activity. The Petitioner responded with additional evidence, 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 claims that she was helpful to the investigation as she reported the criminal activity to two police departments and participated in initial questioning. She states that, although she refused to press charges against her attacker, who was her cousin, she never refused to continue providing assistance to the police department in the investigation of the crime and that the crime could have been prosecuted without her participation as a witness.

III. 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 Form I-918.

A. Helpfulness

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 the certifying agency 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 Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Police Superintendent of the [REDACTED] Police Department (certifying official). On Part 4 of the Form I-918 Supplement B, the certifying official checked the "yes" box indicating that the Petitioner has been or is likely to be helpful in the investigation of the criminal activity and that the Petitioner has not been requested to provide further assistance in the investigation. The [REDACTED] Illinois Police Department report included a statement signed by the Petitioner stating, in relevant part, that the Petitioner "DO[es] NOT WISH to prosecute [her attacker] . . . and will not sign a complaint and request that none be issued. . . . do[es] not wish any prosecution." (emphasis in original). The same statement notes that the certifying agency "is willing to issue a complaint in this matter in question, however, I do not wish any prosecution." In the decision, the Director stated that, because the police report indicated that the Petitioner refused to press charges against her cousin, she had not demonstrated that she met the helpfulness requirement to qualify for U nonimmigrant status.

The record does not indicate that the Petitioner 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 that she was aware that the certifying agency was willing to issue a complaint and she stopped them from doing so indicates her lack of cooperation. 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).

B. Substantial Physical or Mental Abuse

When assessing whether substantial physical or mental abuse was suffered as a result of having been a victim of qualifying criminal activity, USCIS looks at factors such as 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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, the certifying official indicated that "[t]he assailant held the [Petitioner] by her arms and pushed her to the floor, where he attempted rape her. Although he was ultimately [sic] unable to do so, this was only due to the [Petitioner's] ability to kick her assailant off of her body. The [Petitioner] has suffered significant emotional distress as a result." The police report prepared on July 18, 1995 provides substantially the same information as on the Form I-918 Supplement B but also notes that, in the initial stages of the assault, her assailant fondled the Petitioner's breasts and buttocks and that the Petitioner screamed loudly and stamped on the floor to attract attention.

The Petitioner stated that it is difficult for her "to relive those difficult, low moments which emotionally tormented me for a long time (and, I am discovering still, torment me today)." She adds that the attack made her feel "guilty, dirty, sad and powerless to tell the family who [the assailant] actually is and what he did to me." She reported that she distanced herself from her family in order to protect herself because she was afraid that her cousin would deport her if she pursued the criminal charges or disclosed the attack to her family members. The attack also impacted the Petitioner's other relationships because she found it difficult to trust her partner because she feared that he would also abuse her. The Petitioner reported that only her brother knows about what happened because he supported her on the day of the attack and talked with her about what happened to her.

While we consider "any credible evidence" relevant to the Form I-918 petition, according to section 214(p)(4) of the Act and 8 C.F.R. § 214.14(c)(4), the Petitioner's statement does not sufficiently detail the difficulties that the attack caused her, such that we can conclude that the certified criminal activity, by itself, resulted in substantial abuse or serious impairment to the Petitioner's emotional or psychological soundness. The Petitioner's statement discusses in general terms her low self-esteem and depressed feelings, but does not sufficiently describe the connection between her mental health

issues and the attack. In addition, although her brother is aware of the attack, the Petitioner did not provide a statement from him or explain why such a statement is unable to be procured. In this particular matter, the Petitioner has not adequately demonstrated that the incident certified resulted in substantial abuse under the pertinent definition and relevant factors at 8 C.F.R. §§ 214.14(a)(8); (b)(1). Consequently, as the record is presently constituted, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires her to demonstrate that she suffered substantial abuse resulting from qualifying criminal activity.

IV. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of D-M-S-R-*, ID# 14867 (AAO Nov. 10, 2015)