



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

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

MATTER OF M-I-V-

DATE: NOV. 18, 2015

CERTIFICATION OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks nonimmigrant classification as a victim of certain 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. On appeal, we withdrew the Director's determinations, and remanded the matter for entry of a new decision. The matter is again before us on certification, as the Director seeks to deny the petition anew. The Director's decision will be withdrawn and the matter remanded for entry of a new decision.

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;

...

(b)(6)

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(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[es] 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).

II. FACTS AND PROCEDURAL HISTORY

This matter is before us again on certification pursuant to our December 4, 2014 decision to withdraw the Director’s determination that the Petitioner was not helpful to the certifying agency investigating the assault perpetrated against her by her former husband. In our last decision, we found that the Petitioner was helpful as required by section 101(a)(15)(U)(i)(III) of the Act, but that because she was inadmissible to the United States and the Director had denied her Form I-192, Application for Advance Permission to Enter the United States as a Nonimmigrant, we could not sustain the appeal. Instead, we returned the matter to the Director to reconsider the Petitioner’s denied Form I-192 in light of her statutory eligibility for U nonimmigrant classification. We stated that, should the Director again deny the Form I-918 after reconsidering the Form I-192, she shall certify her decision to us for review.

On April 16, 2015, the director again recommended the denial of the Form I-918 due to the Petitioner’s lack of helpfulness to the certifying agency investigating the criminal activity perpetrated against her. As in the prior denial decision, the Director again noted that the law enforcement certification contained internally inconsistent information because the Petitioner told the officer at the scene of the crime that she did not want to see anything happen to her former spouse, who was the assailant, but that the certifying official nevertheless certified the Petitioner’s helpfulness. The Director certified her decision to us for review, providing the Petitioner with a 30-day period to supplement the record. To date, we have received the Petitioner’s brief, and a May 11, 2015 letter from the certifying agency, which is the Office of the Solicitor-General, ██████████ Georgia.

III. ANALYSIS

A. Helpfulness in the Investigation or Prosecution of Qualifying Criminal Activity

We again withdraw the Director's decision in this matter. As we stated in our December 2014 decision, the Petitioner's statement to the victim's advocate that she did not want to see anything happen to her former husband was not a refusal to provide assistance to law enforcement authorities after her initial cooperation. The evidence shows that when the police arrived at the scene, the Petitioner identified her former husband as her assailant and allowed the police to photograph her injuries, which led to the Petitioner's former husband's immediate arrest for domestic violence assault and charges filed against him by the prosecutor. The certifying official certified the Petitioner's helpfulness on the law enforcement certification, and there is no evidence that after the Petitioner's initial cooperation with the police, the certifying agency required further assistance from her to either continue with its investigation or prosecute the Petitioner's former husband. When viewed in its totality the evidence does not support a determination that the Petitioner refused to provide continuing assistance when reasonably requested after reporting her assault to law enforcement authorities.

Our ultimate determination that the Petitioner was helpful in the investigation of the domestic violence assault against her is consistent with the certifying agency's May 11, 2015 letter that the Petitioner submitted in response to the Director certification notice. This letter, which was written by the Chief Assistant Solicitor-General, states, in pertinent part:

The certification form mentions that [the Petitioner] told a victim advocate she "did not want to see anything happen in [the Petitioner's former husband's] criminal case." Our Office views such a statement as a product of the complicated reality of domestic violence cases rather than a refusal on the part of [the Petitioner] to cooperate with the Office of the Solicitor-General. . . . [I]n this case, our Office considers [the Petitioner] to have fully cooperated with law enforcement. Despite [the Petitioner's] comments . . . we do not consider [the Petitioner] to have refused further cooperation in [the Petitioner's former husband's] prosecution.

The preponderance of the relevant evidence of record demonstrates that the Petitioner was helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act, and we withdraw the Director's contrary determination.

B. Admissibility to the United States

Although the Petitioner has established her statutory eligibility for U nonimmigrant classification, the Form I-918 may not be approved because she remains inadmissible to the United States and her Form I-192 remains denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, 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 that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (entry without inspection) and (a)(7)(B)(i) (no valid passport) of the Act without analysis and denied the Petitioner's Form I-192 solely on the basis of the denial of the Form I-918. *See Decision of the Director Denying Petitioner's Form I-192*, dated November 7, 2013. Because the Petitioner has overcome the basis for denial on certification, we will remand the matter to the Director for reconsideration of the Petitioner's Form I-192 and entry of a new decision on the Form I-918.

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 been met as to the Petitioner's statutory eligibility for U nonimmigrant classification. The Form I-918 is not approvable, however, because the Petitioner remains inadmissible to the United States and her Form I-192 remains denied. Because the sole basis for the denial of the Petitioner's Form I-192 has been overcome on certification, we will remand the matter to the director for further action and issuance of a new decision.

ORDER: The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of M-I-V-*, ID# 14121 (AAO Nov. 18, 2015)