



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

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

MATTER OF A-B-

DATE: NOV. 20, 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 matter is remanded to the Director 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.

The Director denied the petition because the Petitioner did not establish that she possessed information concerning the qualifying criminal activity as required under section 101(a)(15)(U)(i)(II) of the Act. On appeal, the Petitioner submits additional evidence.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides 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;

....

Murder is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The regulation governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in part, those who qualify as a victim of qualifying activity, as follows:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

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 . . . :

....

(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. . . . ;

....

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

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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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on November 22, 2005 without inspection, admission or parole. The record contains a marriage certificate issued by the [REDACTED] certifying the religious marriage of the Petitioner to M-L-¹ on [REDACTED] 1997. On June 21, 2013, the Petitioner filed a Form I-918 along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director subsequently issued a Request for Evidence (RFE) to obtain, in part, evidence that the Petitioner possessed information about the qualifying criminal activity. In response, the Petitioner submitted additional evidence, which the Director found insufficient to establish eligibility. The Director denied the petition, finding that the Petitioner did not submit a personal statement and possess information concerning the qualifying criminal activity. The Petitioner filed a timely appeal.

A. Claimed Criminal Activity

The initial Form I-918 Supplement B submitted into the record was signed on April 23, 2013 by Sergeant (Sgt.) [REDACTED] Homicide, [REDACTED] Sheriff's Department, [REDACTED] California (certifying official). In Part 3.1 of the Form I-918 Supplement B, which inquires about the criminal activity of which the Petitioner was a victim, the certifying official checked the boxes for felonious assault and murder. In Part 3.3, the certifying official cited section 187 of the California Penal Code, which relates to the offense of murder, as the relevant criminal statute for the criminal activity that was investigated or prosecuted.² At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the suspect shot and killed the Petitioner's claimed husband, M-L-, and shot and wounded F-L-,³ M-L's brother. In Part 4, the certifying official indicated that the Petitioner: (1) did not possess information concerning the criminal activity; (2) has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity; and (3) has not unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the such activity. [REDACTED] did not provide further information about the Petitioner's possession of information.

In response to the Director's RFE, the Petitioner submitted a second Form I-918 Supplement B signed on May 6, 2014 by [REDACTED] Sheriff's Department, [REDACTED] California. [REDACTED] attested to the same criminal acts and helpfulness of the Petitioner except that in Part 4, [REDACTED] indicated that the Petitioner does possess information concerning the criminal activity.

¹ Name withheld to protect the privacy of the individual's family.

² Cal. Penal Code § 187 (West 2005) defines murder, in part, as the "unlawful killing of a human being, or a fetus, with malice aforethought."

³ Name withheld to protect the privacy of the individual.

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III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the Director's determination that the Petitioner did not possess information about the qualifying criminal activity.

A. The Petitioner's Possession of Information

In her denial decision, the Director stated that although the Form I-918 Supplement B showed that the Petitioner possessed knowledge of the criminal activity being investigated or prosecuted, no documentary evidence was submitted to corroborate the Form I-918 and that the Petitioner did not submit a statement, as required by the regulation. On appeal, the Petitioner overcomes the Director's finding that she did not establish that she possessed knowledge of the criminal activity being investigated or prosecuted.

The regulation at 8 C.F.R. § 214.14(b)(2) requires the Petitioner to show that she possesses credible and reliable information that she has knowledge of the details concerning the qualifying criminal activity upon which the petition is based. On appeal, the Petitioner submits two personal statements. The Petitioner, in one of her personal statements, indicates that her claimed husband, M-L-, told her a week before his murder that a co-worker, [REDACTED], falsely accused M-L- of having an affair with [REDACTED] wife. The Petitioner states that [REDACTED] made death threats against M-L-, the Petitioner and their children prior to M-L-'s death, and that M-L- moved the family to [REDACTED] California to keep them safe. The Petitioner states that on [REDACTED] 2005, M-L- was shot in the back at work and was pronounced dead in the ambulance. The Petitioner indicates that she gave a similar statement to the police during the investigation.

On appeal, the Petitioner submits a copy of a September 2014 electronic mail correspondence (email) from the certifying official, [REDACTED] attaching the initial police report, the crime report of the [REDACTED] Police Department, [REDACTED], California dated [REDACTED] 2005. The crime report describes a shooting at a construction site where one of the victims, M-L- was pronounced dead, and the other, F-L-, was wounded and required surgery. The investigating officer states that he learned from the construction crew foreman that M-L- was reportedly having an extramarital affair with the wife of another worker, known as [REDACTED] and that [REDACTED] had quit the job approximately three weeks before the shooting because he did not want to be near M-L-. The Petitioner also submits a special bulletin indicating that [REDACTED] was wanted for the murder of M-L- on [REDACTED], 2005, naming the certifying official as the contact person. The record also contains a [REDACTED] 2014 letter from Acting [REDACTED] Homicide Bureau, [REDACTED] Sheriff's Department Headquarters, indicating that the murder case is being presented to the [REDACTED] County District Attorney's Office for a criminal filing, and that the certifying official requests that the Petitioner be allowed to remain in the country to testify in the criminal trial.

Here, the March 2014 letter from the [REDACTED] Sheriff's Department Headquarters requesting that the Petitioner be allowed to remain in the United States to testify at the criminal trial, the second Form I-918 Supplement B dated in May 2014 indicating that the Petitioner possesses information about the

criminal activity, and the September 2014 email from the certifying official attaching information supportive of her Form I-918 petition corroborate the Petitioner's personal statements that she possesses information concerning the criminal activity being investigated or prosecuted. The record contains sufficient evidence that the Petitioner has specific knowledge and details about the criminal activity at issue and that she was, is being, or is likely to be helpful in the detection, investigation or prosecution of the criminal activity. We withdraw the Director's finding to the contrary.

B. The Petitioner does not Qualify as a Victim

The Form I-918 may not be approved, however, as the record does not contain evidence that the Petitioner was married to M-L-, and as such that she is an indirect victim of the criminal activity.⁴ In cases where the direct victim was murdered, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried siblings of victims under 21 years of age. *See* 8 C.F.R. § 214.14(a)(14)(i).

The record contains a religious certificate stating that the Petitioner and M-L- were married in the church; nevertheless, for the marriage to be considered valid, a civil ceremony is required.⁵ The U.S. Department of State visa reciprocity schedule for Mexico provides that marriage certificates may be obtained from the appropriate state Central Civil Registry, and further that "[c]hurch marriage certificates are not normally acceptable, as they have no validity in Mexico without a civil ceremony." *See* <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/MX.html> (accessed November 12, 2015). In the rare case where the civil documents are not available, the party to the marriage must obtain a certificate of non-existence. *Id.*

As the record does not contain a civil marriage certificate, the Petitioner has not established that she is an indirect victim of the criminal activity. The petitioner has, therefore, failed to establish that she was the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act. As the Director has not previously addressed this issue, the matter will be remanded for the Director to give the Petitioner the opportunity to provide evidence that she had a valid marriage with M-L-.

C. Admissibility

The instant petition may also not be approved because the Petitioner remains inadmissible to the United States. Section 212(d)(14) of the Act requires 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

⁴ We may deny an application or petition that fails to comply with the technical requirements of the law 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).

⁵ The names of the Petitioner and M-L- are in darker ink on the religious certificate than the remaining information on the certificate, which raises a question about the validity of the certificate.

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, Application for Advance Permission to Enter as Nonimmigrant, 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. *See* 8 C.F.R. § 212.17(b)(3).

In this case, the Director denied the Petitioner's Form I-192 solely on the basis of the denial of the Form I-918. The Director indicated that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present in the United States without admission or parole), and 212(a)(7)(B)(i)(I) (not in possession of a valid passport). The record does not support a finding of the Petitioner's inadmissibility under § 212(a)(7)(B)(i)(I) of the Act, as the record contains a copy of her valid, unexpired passport. The record, however, shows that the Petitioner is inadmissible under section 212(a)(6)(A)(i), as she is present in the United States without admission or parole. The Director did not determine whether USCIS would have favorably exercised its discretion and approved the Form I-192, but denied the Petitioner's waiver request based solely on the denial of her Form I-918. We also remand the matter to the Director for reconsideration of the Petitioner's Form I-192 if the Petitioner establishes that she is a victim of 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met as to the Petitioner's possession of information, as required for U nonimmigrant classification. The Form I-918 is not approvable, however, because the record does not establish that the Petitioner is a victim of qualifying criminal activity. The Form I-918 may also not be approved, as it appears that the Petitioner is inadmissible to the United States and her waiver application has been denied. Because the basis for denial of the Petitioner's Form I-918 has been overcome on appeal, the matter will be remanded to the Director for further action and issuance of a new decision.

ORDER: The matter is remanded to the Director 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 A-B-*, ID# 14370 (AAO Nov. 20, 2015)