



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

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

MATTER OF A-H-O-

DATE: SEPT. 24, 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 The Director's decision will be withdrawn and the matter remanded for entry of a new decision.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;

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.”

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[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). 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 in July 1999 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 March 4, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant on the same day. The Director subsequently issued a request for evidence (RFE) requesting that the Petitioner establish his helpfulness to law enforcement in investigating or prosecuting the claimed criminal activity. The Petitioner submitted a brief and additional evidence, including a second Form I-918 Supplement B, in response to the RFE, which the Director found insufficient to establish the Petitioner’s eligibility. Accordingly, the Director denied the Form I-918. On the same day, the Director denied the Form I-192 because of the denial of the Form I-918 and noted that the Petitioner is inadmissible. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner asserts that the second Form I-918 Supplement B confirms the helpfulness of the Petitioner.

(b)(6)

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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 petition will be remanded to the Director for entry of a new decision in keeping with this decision.

A. Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that he 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 his 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 an initial Form I-918 Supplement B signed by [REDACTED] (certifying official) of the [REDACTED] Police Department, dated January 24, 2013 and relating to an incident that occurred on May 6, 2007. The certifying official indicated at Part 4.2 that the Petitioner was helpful in the investigation of the qualifying criminal activity, at Part 4.3 that the Petitioner has been requested to provide further assistance in the investigation and/or prosecution, and at Part 4.4 that the Petitioner has not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. In response to the Director’s RFE, the Petitioner submitted a second Form I-918 Supplement B from the certifying official, dated May 29, 2014, which indicated at Part 4.3 that the Petitioner has not been requested to provide further assistance in the investigation and/or prosecution and at Part 4.5 that the Petitioner “filed a police report and gave a description of [the] offender[s] to police and was available for follow up as needed.”

The regulations require the Petitioner to 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). Here, nothing in the record indicates that the Petitioner refused or failed to provide information or assistance reasonably requested by the certifying agency. To the contrary, although the initial Form I-918 Supplement B was silent as to the degree of assistance rendered by the Petitioner, the certifying official specified on the second Form I-918 Supplement B that the Petitioner helped the investigation by filing a police report and providing a description of his assailants, their vehicle and the direction in which they fled the crime scene. In addition, the second Form I-918 Supplement B stated that the Petitioner was available for follow-up and he had not been requested by the certifying agency to provide further assistance. In addition, the Petitioner, in an affidavit dated June 25, 2014, indicated that he visited the police station two weeks after the incident and was told by the police that they would contact him if they had any information. He also informed the police that he was moving due to concerns for his family’s safety, and the police confirmed his telephone number in case they needed to contact the Petitioner. Based on the foregoing, the record demonstrates that the Petitioner satisfied the helpfulness requirement imposed by regulation and statute to provide continuing assistance in the investigation or prosecution of

qualifying criminal activity, when reasonably requested. We withdraw the Director's determination to the contrary.

B. Admissibility

Notwithstanding our withdrawal of the Director's determination, the instant petition may not be approved because the Petitioner remains inadmissible to the United States and his waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), 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 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 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, however, the Director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver, but denied his waiver request based solely on the denial of his Form I-918. Because the Petitioner has overcome this basis for denial on appeal, we will remand the matter to the Director for reconsideration of the Petitioner's Form I-192.

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.

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-H-O-*, ID#14378 (AAO Sept. 24, 2015)