



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

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

MATTER OF A-R-L-V-

DATE: SEPT. 30, 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 will be remanded to the Director.

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[.]

Domestic violence 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 A-R-L-V-*

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in August 2003, without inspection, admission, or parole. The Petitioner filed the instant Form I-918 with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on October 10, 2013. On August 1, 2014, the Director issued a request for evidence (RFE) that the Petitioner was helpful in the investigation or prosecution of qualifying criminal activity. The Petitioner responded to the RFE with an additional statement and additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-918 and Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The Petitioner timely appealed the denial of the Form I-918.

On appeal, the Petitioner contends that USCIS erred in determining that she did not establish that she was helpful in the investigation of the cited qualifying criminal activity because the certifying official indicated in the Form I-918 Supplement B and in a subsequent letter that the Petitioner was helpful in the investigation of domestic violence, a qualifying crime. The Petitioner also asserts that she did not interfere with the investigation or prosecution of the qualifying criminal activity, and that she was helpful to the investigation and prosecution as long as her help was requested.

## III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the Director's decision to deny the petition on the stated grounds and remand for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 that is consistent with our findings.

### A. Certified Criminal Activity

In her declarations, the Petitioner recounted that her ex-boyfriend abused her. The Form I-918 Supplement B that the Petitioner submitted was signed by Chief Deputy District Attorney [REDACTED] California, District Attorney's Office (certifying official), on April 11, 2013. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to the California Penal Code § 243(E)(1) (domestic violence), as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that the Petitioner's ex-boyfriend physically abused the Petitioner repeatedly and that on [REDACTED] 2011, after another incidence of physical abuse, the Petitioner called the police, gave them a statement regarding the incident, and filed for a restraining order against her ex-boyfriend. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the police photographed the Petitioner's injuries and that the Petitioner gave a statement to the police describing the attack that led to her injuries. At Part 4, the certifying official checked the boxes indicating that the Petitioner was helpful and had not unreasonably refused to provide assistance in the investigation and/or prosecution. At Part 4.5, the certifying official noted that the Petitioner cooperated in the investigation and that the perpetrator pled *nolo contendere* to the charge, but then indicated that the Petitioner informed the

District Attorney's Office that she wanted to drop the charges, she communicated with the perpetrator despite a no contact order, and she snuck into the jail to visit the perpetrator despite said order.

#### B. Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a 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).

On the Form I-918 Supplement B, the certifying official indicated at Part 4 that the Petitioner was helpful in the investigation of the qualifying domestic violence 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. According to an attached felony incident report, after the Petitioner's ex-boyfriend assaulted her, the Petitioner called the police, showed the police her injuries, and gave a statement explaining what had happened. The report stated that the Petitioner allowed the police to take photographs of her injuries. The report also indicated that the responding police officer obtained an Emergency Protective Order for the Petitioner.

In the RFE, the Director stated that because the certifying official indicated on the Form I-918 Supplement B that the Petitioner wanted to drop the charges and communicated with the defendant, additional evidence from the certifying official was required to establish that the Petitioner was indeed helpful to the investigation or prosecution of the qualifying criminal activity. The Petitioner then responded to the RFE with a letter from the certifying official in which she, according to the Director, "reinstate[d] her previous declaration." The Director found this evidence insufficient to establish the Petitioner's eligibility and denied the Form I-918.

*De novo* review shows that the Petitioner was helpful to law enforcement in the investigation and prosecution of the qualifying criminal activity. U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity. A victim must not only demonstrate her cooperation in an investigation or prosecution of qualifying criminal activity, but also establish that "since the initiation of cooperation, [the victim] has not refused or failed to provide information and assistance reasonably requested[.]" See Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. §§ 214.14(b)(3). As noted in the Preamble to the U nonimmigrant rule: "USCIS believes that the statute imposes an ongoing responsibility on the alien victim to provide assistance, *assuming there is an ongoing need for the applicant's assistance.*" *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). (Emphasis added).

On appeal, the Petitioner contends that her question as to whether she could drop the charges and her communication and visitation with her ex-boyfriend are irrelevant as they did not interfere with the investigation or prosecution in any way, and that she was helpful for as long as help was requested

as evidenced by her ex-boyfriend's conviction. We concur that the Petitioner's question to the District Attorney's Office to see if she could drop the charges 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 ex-boyfriend as her assailant, gave a statement to the police about the incident, and allowed the police to photograph her injuries, which led to the Petitioner's ex-boyfriend's arrest for battery and ultimately resulted in his conviction for the crime. The certifying official certified the Petitioner's helpfulness on the Form I-918 Supplement B, 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 ex-boyfriend. In fact, in an additional letter, the certifying official again noted that the Petitioner was helpful to the police when they initially took the police report, and indicated that the Petitioner's "assistance was not further requested by the prosecution, as the defendant pled *nolo contendere* . . . to having committed a battery upon her." As such, 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. The Director's contrary determination is withdrawn.

### C. Admissibility

Although the Petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her 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. 8 C.F.R. § 212.17(b)(3).

In this case, the Director determined the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission), (a)(6)(c)(i) (fraud and willful misrepresentation), and (a)(6)(c)(ii) (false claim to U.S. Citizenship) 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. Because the Petitioner has overcome the basis for the Form I-918 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 as to the Petitioner's statutory eligibility for U

*Matter of A-R-L-V-*

nonimmigrant classification. The petition is not approvable, however, because the Petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the Petitioner's waiver application 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 review.

Cite as *Matter of A-R-L-V-*, ID# 14443 (AAO Sept. 30, 2015)