



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

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

MATTER OF J-I-M-M-

DATE: NOV. 17, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. See Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was helpful to law enforcement. The Director also noted that the Petitioner is inadmissible and that his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), was denied.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. He asserts that the Director erred in concluding that he was not helpful to law enforcement in the detection or investigation of qualifying criminal activity.

Upon *de novo* review, we will dismiss the appeal.

I. 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

(b)(6)

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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[.]

The regulation at 8 C.F.R. § 214.14(b) provides the following pertinent information regarding the eligibility requirements for U nonimmigrant classification:

(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[.]

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has overcome one, but not both, of the Director's grounds for denial.

A. Criminal Activity Certified as Being Detected, Investigated, or Prosecuted

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed by [REDACTED] Sergeant Detective, [REDACTED] Police Department, [REDACTED] California (certifying official). At part 3.3 of the Supplement B, the certifying official cited Cal. Penal Code section 273.5, infliction of corporal injury on spouse, as the statutory citation for the criminal activity that was investigated or prosecuted. At part 3.1, the certifying official asserted that the offense committed against the Petitioner involved or was similar to the qualifying crime of domestic violence. At part 3.5 of the Supplement B, the certifying official indicated that the Petitioner was the victim of domestic violence by his partner. With regard to the Petitioner's

helpfulness, the certifying official stated at part 4.5 of the Supplement B that the Petitioner told the police detective “that he did not want the suspect prosecuted or to get a restraining order.”

B. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The Director concluded that the Petitioner did not establish that he was helpful to law enforcement in the investigation or prosecution of the qualifying criminal activity against him because he told the police that he did not wish to press charges or get a restraining order against the perpetrator. The Director requested that the Petitioner provide a letter from the certifying official stating whether the Petitioner has been, is being, or is likely to be helpful in the investigation or prosecution. The Petitioner did not submit such a letter, but instead provided a personal affidavit explaining his reasons for not pressing charges or seeking a restraining order. The Director found this evidence insufficient to establish the Petitioner’s helpfulness. We find that the Petitioner was helpful to law enforcement as required by section 101(a)(15)(U)(i)(III) of the Act, and we will withdraw the Director’s finding to the contrary.

The term “investigation or prosecution,” as used in section 101(a)(15)(U)(i) of the Act, also includes the “detection” of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5). Pursuant to the regulations, the Petitioner 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[s] 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).

The certifying official indicated at part 4.2 of the Supplement B that the Petitioner has been, is being, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity. Although the certifying official stated at part 4.5 that the Petitioner told the detective he did not want to press charges or seek a restraining order, the certifying official did not indicate that the Petitioner was not helpful. The evidence of record does not indicate that the Petitioner’s preference not to press charges or obtain a restraining order impeded the detection or investigation of the crime, or that the Petitioner refused or failed to provide any assistance or information that law enforcement officials requested. The police report states that the Petitioner contacted the police after an altercation with his girlfriend, who scratched the Petitioner’s face. The Petitioner provided information to the police in an interview and the Petitioner’s girlfriend was arrested. The police report does not indicate that the Petitioner was uncooperative or failed or refused to provide any requested assistance or information.

Additionally, the Petitioner stated in his affidavit that he was hesitant to press charges because he feared he would be deported if he had contact with the police or judicial system. The Petitioner indicated that he initially told the police that he did want a restraining order, but then changed his mind when the police told him that seeking a restraining order would require him to appear before a judge. The Petitioner noted that he provided the police with sufficient information to arrest his

girlfriend, and that the police had his contact information so that they could request further information from him if necessary. The Petitioner stated that he did not hear from the police again after the date of his girlfriend's arrest, but that he was willing to provide further assistance if needed.

The evidence of record does not indicate that the Petitioner refused or failed to provide any assistance or information that law enforcement officials requested. Accordingly, the Petitioner has established his helpfulness as required by section 101(a)(15)(U)(i)(III) of the Act.

C. Admissibility

Although the Petitioner has established his statutory eligibility for U nonimmigrant classification, the U petition may not be approved because he 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 U petition, 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 waiver application in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a waiver application submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the Director found the Petitioner inadmissible under sections 212(a)(6)(A)(i) (entry without inspection), 212(a)(7)(B)(i)(I) (no valid passport), 212(a)(9)(B)(i)(II) (unlawful presence for one year or more), 212(a)(9)(C)(i)(I) (attempt to enter without being admitted after being unlawfully present for one year in the aggregate), 212(a)(2)(A)(i)(II) (controlled substance violation), and 212(a)(2)(C) (controlled substance trafficker). The Director considered the merits of the Petitioner's waiver application and denied it on discretionary grounds. On appeal, the Petitioner does not contest the Director's findings of inadmissibility or the decision to deny the waiver. Because the Petitioner is inadmissible and his waiver application was denied, he is ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

III. 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 J-I-M-M-*, ID# 12603 (AAO Nov. 17, 2016)