The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p).

The Nebraska Service Center Director denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding overall that she did not demonstrate she was a victim of qualifying criminal activity. The denial of the Petitioner’s U petition is now before us on appeal.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); Matter of Chawathe, 25 l&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See Matter of Cristo’s Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that a remand is warranted in this case.

I. LAW

The U-1 classification affords nonimmigrant status to victims of qualifying criminal activity who suffer substantial physical or mental abuse as a result of the crime. Section 101(a)(15)(U)(i) of the Act. To be eligible for U-1 nonimmigrant status, the petitioner must also possess information about the qualifying crime and 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” in their investigation or prosecution of the crime. Id.

A U petition must be filed with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a “Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity” certifying that the petitioner was a victim of qualifying criminal activity that the certifying agency is investigating or prosecuting, possesses information about the crime, and “has been, is being, or is likely to be helpful” in the investigation or prosecution of the crime. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i).

The implementing regulations similarly define “certifying agency” to include a “Federal, State, or local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the
investigation or prosecution of a qualifying crime or criminal activity.” The regulation further clarifies that agencies that have criminal investigative jurisdiction in their respective areas of expertise (e.g., subject matter jurisdiction) that includes “child protective services.” 8 C.F.R. § 214.14(a)(2). The regulatory definition of “investigation or prosecution” includes the “detection or investigation of a qualifying crime . . ., as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” 8 C.F.R. § 214.14(a)(5). Although a petitioner may submit any credible evidence relevant to the petition, we determine, in our sole discretion, the credibility of and the weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Factual and Procedural History

The Petitioner is a Mexican citizen who entered the United States without being inspected, admitted, or paroled in 2003. She explained in her personal statement that she has two U.S. citizen children and the father of her youngest child assaulted her and she was the victim of domestic violence. We will refer to the accused abuser as L-O-. Accompanying her U petition, the Petitioner submitted a Supplement B signed in January 2015 by the Interim Commissioner of the Massachusetts Department of Children and Families (DCF). That Supplement B reflected a checkbox for criminal activity involving or similar to domestic violence, provided the statutory citations for assault or assault and battery at Massachusetts General Laws Annotated Chapter 265, section 13A, and offered a textual description of domestic abuse by her boyfriend and the father of one of her children. Under Part 3.6 of the Supplement B, the certifying official indicated that the victim was abused by the boyfriend and that a “[c]aseworker documented bruising on [the Petitioner].”

Accompanying the U petition, the Petitioner offered two reports: one from DCF and one from the Police Department. The DCF Intake Report from 2013 and the associated historical record reflected that:

- The Petitioner’s boyfriend hit her causing her to seek housing in a battered women’s shelter;
- The abusive boyfriend, L-O-, is her youngest child’s biological father;
- L-O- threatened to take the youngest child; and
- He was using the Petitioner’s undocumented status against her and she was afraid he was going to have her removed from the country.

The 2014 Incident Report from the Police Department detailed a related but separate incident. This report indicated that no crime was involved, and it described an incident in which L-O- was reported for attempting to enter a window to “get at [the Petitioner] that was staying there.” One officer located a male matching dispatch’s description running down a nearby street and detained him in his vehicle until another officer spoke with the Petitioner, who indicated the two were arguing and she became afraid of him. The officer detaining L-O- warned him to stay away from the Petitioner and from the address where she was residing. And the officers advised the Petitioner of her options and she indicated she would consider obtaining a restraining order against L-O-.
In response to the Director’s request for evidence, the Petitioner submitted a second Supplement B and an Abuse Prevention Order from the District Court prohibiting L-O-Z from abusing or contacting the Petitioner. The second Supplement B was also certified by a DCF representative and contained information consistent with the first Supplement B form. Accompanying the new Supplement B was a letter signed by the Commissioner of the DCF that stated the agency is a certifying agency as defined in the regulation at 8 C.F.R. § 214.14(a)(2) that is responsible for detecting and investigating child abuse and neglect in Massachusetts. Within the response to the Director’s request for evidence, the Petitioner also provided the Massachusetts statute that described DCF’s authority to investigate subject matter expertise jurisdiction issues relating to children and families.

The Director denied the U petition because the evidence did not demonstrate that DCF was a certifying agency that can investigate or prosecute crimes other than child abuse and neglect. The Director also indicated that because the Police Department’s Incident Report did not refer to a criminal citation, that no crime was investigated or prosecuted and there was no qualifying criminal activity. The Director further stated that because the Petitioner did not demonstrate she was a victim of qualifying criminal activity, she was unable to demonstrate she has suffered substantial physical or mental abuse.

B. Certifying Agency as Defined in the Regulation

The Director appears to have denied the U petition, in part, concluding that DCF is not a certifying agency under 8 C.F.R. § 214.14(a)(2). On appeal, the Petitioner notes that regulation at 8 C.F.R. § 214.14(a)(2) indicates that the definition of a certifying agency “includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services . . . .”

In Massachusetts, DCF is the state’s equivalent to child protective services. Still, the Director stated, “[t]he Massachusetts [DCF] is a social services agency and not a criminal law enforcement agency . . . .” The Director further stated that “the letter that has been provided by [the Commissioner of DCF] indicates they do not have the authority to investigate/prosecute anything other than that of child abuse and neglect cases.”

Ultimately, the purpose behind the U program was partly to strengthen law enforcement’s ability to detect, investigate, and prosecute cases of domestic violence and to protect victims of such offenses. See Victims of Trafficking and Violence Protection Act of (VTVPA) 2000, Pub. L. 106-386, 114 Stat. 1464, sec. 1513(a)(1). The 2007 U nonimmigrant Interim Rule recognized child protective services as an appropriate certifying agency, even though they are considered to be outside traditional law enforcement branches within the criminal justice system. Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). Similarly, even though judges do not investigate or prosecute perpetrators, we still determined that in the context of the entities that could properly certify a Supplement B form, “the term ‘investigation or prosecution’ should be interpreted broadly . . . .” 72 Fed. Reg. at 53020. The accepted view is that child protective services is recognized as a state and local law enforcement agency.

In similar nonimmigrant victim contexts, we have indicated that agencies—such as child protective services—that have the responsibility to detect qualifying activity may be considered to be an
appropriate entity to certify a Supplement B form even if the agency does not investigate or prosecute those qualifying acts. Cf. Interim Rule, Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92266, 92276 (Dec. 19, 2016). Considering these aspects as a whole informs our decision here to conclude that as an appropriate certifying agency, the DCF may detect qualifying criminal activity, even if it lacks the authority to investigate or prosecute it.

Here, the Director incorrectly concluded that DCF was a social services agency and not a law enforcement agency despite the regulation at 8 C.F.R. § 214.14(a)(2) listing child protective services as an appropriate entity to certify a Supplement B form. Additionally, the Director decided that because the DCF letter stated that it “is responsible for detecting and investigating child abuse and neglect in Massachusetts,” that this nullified our regulatory language that specifies child protective services is included within the types of certifying agencies. See 8 C.F.R. § 214.14(a)(2). We do not agree that generalized language within the correspondence from the DCF was an indication that they were precluded from detecting or investigating any offense outside of child abuse and neglect. In this instance, we consider the language within the letter as descriptive of DCF’s authority and not as limiting the types of offenses the agency could detect or investigate.1

Accompanying the Intake Report, the DCF History reflected that the Petitioner contacted the agency because she needed assistance with paperwork relating to a school transfer. This paperwork was needed as she was moving to another jurisdiction to live in a battered women’s shelter because L-O hit her, and it detailed her fears that he was using her lack of status in the United States as a threat to have her removed from the country. Within the Decision Comment field in the DCF History document, the screener concluded that domestic violence had occurred, noted the need to assess the effects this had on the children, and noted the Petitioner did the appropriate thing by leaving the environment and seeking services through DCF. We further note the Petitioner obtained an Abuse Prevention Order against L-O from the _______ District Court prohibiting him from contacting the Petitioner or approaching her residence, workplace, or school.

In this case, the Petitioner has met her burden of establishing that, in the course of investigating possible child abuse or neglect, DCF detected the qualifying crime of domestic violence. Based on the specific factors present in this case, we conclude that the Massachusetts DCF was one of the appropriate certifying agencies identified within the regulation to certify a Supplement B form.

III. CONCLUSION

Upon de novo review, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the Supplement B was certified by an appropriate certifying agency. The Director

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1 For additional reference, the Massachusetts General Laws Annotated reflect that DCF “shall provide and administer a comprehensive child welfare program for children and families . . . .” Mass. Gen. Laws Ann. ch. 18B, § 2. Massachusetts law further provides that DCF may provide “legal services for families” as well as “temporary residential programs providing . . . assistance for families in transition and their children who, because of domestic violence, . . . require temporary shelter and assistance.” Id. at 2(3), (11). Here, Massachusetts law expands DCF’s authority to detect and investigate offenses to its residences beyond children and includes their close relatives. As a result, it appears the DCF does not erect a wall limiting its detection—and investigation—services to children alone without regard to their associated family members.
concluded that there was no qualifying criminal activity, but the basis of that determination appears to be related to whether DCF was an appropriate certifying agency. As we conclude that it is, the matter is remanded to the Director to determine whether the Petitioner has satisfied the remaining eligibility requirements for U-1 nonimmigrant status.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis which, if adverse to the Petitioner, shall be certified to us for review.