

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: **OCT 18 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion to reopen will be granted and the AAO's prior decision to dismiss the appeal will be affirmed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Factual and Procedural History

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The director denied the petition because the petitioner did not demonstrate her helpfulness to law enforcement authorities in the investigation or prosecution of the domestic violence perpetrated against her by her live-in boyfriend, and because she did not possess information about the criminal activity. On appeal, the petitioner explained that any inconsistencies in her account of events were due to her traumatization as a result of the attack. The petitioner further stated that she never refused to cooperate with the investigation and prosecution of the criminal activity, and maintained that she is willing to testify against her abuser.

In our prior decision, we found that the petitioner did establish that she possessed information concerning the qualifying criminal activity, but that she failed to establish that she provided ongoing cooperation to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity. Accordingly, we dismissed the petitioner's appeal.

On motion, the petitioner states that the denial was erroneous because she was and is still willing to testify against her attacker. The petitioner again states that any inconsistencies between what she told police at the time of the domestic violence incident and what she subsequently recounted to a detective resulted from the trauma she experienced on the night that she was attacked by her boyfriend. The petitioner submitted, among other things, another personal statement and a psychological assessment in which an educational psychologist finds that the petitioner's behavior in not reporting her ex-boyfriend to the police was due to Battered Person Syndrome from which the petitioner suffers. The petitioner's statements on motion fail to overcome our prior determination that the petitioner did not establish ongoing cooperation to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As noted in our prior decision, the record indicates that although the certifying official indicated at Part 4 of the Form I-918 Supplement B that the petitioner possessed information about the criminal activity and was helpful in the investigation of the qualifying 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, the police reports that were subsequently submitted contained information that was inconsistent with the certifying official's statements.

According to the police reports, the reporting officer noted that he had contacted the petitioner by telephone on May 11, 2010 at which time the petitioner told him that she only wanted her boyfriend to stay away from her; she didn't want any criminal prosecution, or to testify against him in any court proceedings. The officer noted further that the petitioner was unable to provide any contact information for her boyfriend so the officer could take his statement. In the report dated July 6, 2010, the officer stated that he made attempts to contact the petitioner by telephone, but there was no answer and no answering machine on which to leave a message. The officer also described visiting the petitioner's home and her neighbor on June 18, 2010, but neither individual responded to knocks on their doors. The officer stated that he left his business cards at both residences, asking them to contact him. The officer stated that as of the date of the report (July 6, 2010), the petitioner had not contacted him.

In the final police report, dated July 30, 2010, the officer stated that the district attorney had requested further information on the progress of the investigation. The officer wrote: "Given the fact that the victim did not want prosecution until she learned that her request for a U-Visa would be adversely affected by her lack of cooperation, coupled with the fact that she has not responded to my repeated attempts to contact her, I believe that any further attempts to contact her would be fruitless."

U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(4). As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence to Satisfy the Eligibility Requirements. While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007)

The regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that "since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested."

The petitioner asserts again that her initial refusal to seek prosecution was based on her fear of her ex-boyfriend, as she suffers from "Battered Spouse Syndrome." She affirms that she is willing to testify against him. The petitioner also states that she never refused to cooperate with law enforcement and that she did in fact contact the police officer who left his business card and provided him with her ex-boyfriend's mother's phone number. However, the petitioner's general statements fail to overcome the

negative information in the July 2010 police reports, as she provides no probative details concerning her contact with law enforcement authorities such as when she made such contact or the identity of the officer with whom she claims to have spoken. Further, while the petitioner claims she gave the officer her ex-boyfriend's mother's phone number, in a previous declaration the petitioner said she provided the officer with her ex-boyfriend's sister's phone number. Although she claimed to have recently contacted the same police officer with whom she dealt in 2010, the petitioner failed to provide any evidence to substantiate this claim, or submit any other evidence from a law enforcement official of her further attempts to cooperate with law enforcement in the investigation and prosecution of the case.

While the regulation at 8 C.F.R. § 214.14(b)(3) provides for an exemption in the case of a petitioner who is under the age of 16, incapacitated, or incompetent, there is no evidence that these factors are present in the instant matter or that the certifying agency's requests were unreasonable. Accordingly, the petitioner's refusal to assist with the certifying agency's reasonable efforts to investigate or prosecute the qualifying criminal activity precludes satisfaction of the regulatory requirement. Consequently, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

The petitioner has not met her burden of showing that she provided ongoing cooperation to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The AAO's prior decision, dated April 23, 2012, is affirmed. The appeal remains dismissed, and the petition remains denied.