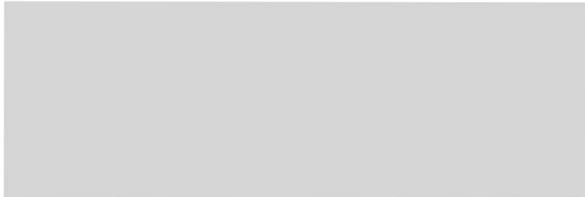




U.S. Citizenship
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(b)(6)



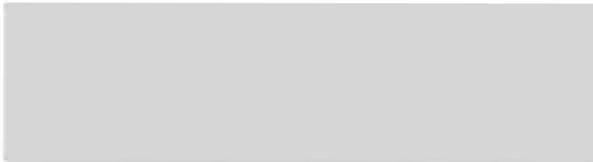
DATE: **JUN 03 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The director denied the petition finding the petitioner did not establish that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief.

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, abusive sexual contact, rape, and sexual assault are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

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).

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. . . .

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.” 8 C.F.R. § 214.14(a).

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.”

Facts and Procedural History

The petitioner is a native and citizen of Guatemala who entered the United States on November 2, 1991, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 14, 2013. The Form I-918 Supplement B was signed by Sergeant [redacted] Police Department, [redacted] California (certifying official), on November 21, 2012. The certifying official indicated that the case involved the spousal rape of the petitioner and that the case “was closed but never prosecuted because the [petitioner]

refused to prosecute.” At Part 4.2, the certifying official indicated “No” to the question of whether the petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity. He further indicated at Part 4.4 that the petitioner had unreasonably refused to provide assistance. In discussing the petitioner’s helpfulness at Part 4.5, the certifying official reported that the petitioner filed the report six months after the crime and “[i]nvestigators originally had a difficult time trying to contact the [petitioner].” The certifying official then indicated that the petitioner signed a “complaint refusal” two weeks after filing the report and that “[i]t is unknown if the [petitioner] was forced to file the complaint refusal by the suspect or if she lied about the crime.” In addition to the Form I-918 Supplement B, the petitioner submitted a police report, an order to show cause for an injunction, her examination document, an invoice from a hospital, and her declaration.

Based upon the information in the Form I-918 Supplement B, the director requested an additional statement from the certifying official stating that the petitioner was helpful in the investigation of the qualifying crime. The petitioner did not provide the requested letter and instead submitted new declarations from herself, a letter from her pastor, her son’s medical documents, a letter from her son’s doctor, photographs, and a copy of a *U Visa Law Enforcement Certification Resource Guide*. In her declaration, the petitioner stated that while she was at the station to talk with the police the perpetrator was there and saw her, and she was afraid and “told the officer that she did not want to do the case anymore.” The director subsequently denied the petition, finding that the “evidence does not appear to indicate that law enforcement made unreasonable requests for helpfulness or assistance as part of the investigation or prosecution of the certified criminal activity.” The petitioner timely appealed the denial of the Form I-918 petition.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, and the brief on appeal, the petitioner has not overcome the director’s decision to deny the petitioner’s Form I-918 petition.

On appeal, the petitioner states that the *U Visa Law Enforcement Certification Resource Guide*¹ indicates that being helpful means providing assistance when “reasonably requested” and only individuals that “unreasonably refuse” to assist after reporting a crime are ineligible for a U visa. The petitioner asserts that she was “helpful within the reasonableness standard” and refused to prosecute because when she went to meet the police officer for “follow up,” the perpetrator was at the police station and she became “very frightened.” She also contends that in the denial letter the director was in error regarding the sequence of events of the petitioner’s initial statement to the police and subsequent visit to the police station for “follow up.”

¹ U.S. Department of Homeland Security, Washington, D.C., *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement* (January 11, 2012).

Section 214(p)(1) of the Act requires a Form I-918 petition to be accompanied by a certification from a certifying official that states that the petitioner “has been helpful, is being helpful, or is likely to be helpful” and “since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

In this case, the Form I-918 Supplement B does not include the certifying official’s endorsement of the petitioner’s helpfulness, and the certifying official also indicated that the petitioner unreasonably refused to provide assistance in the crime of which she was a victim. The regulation at 8 C.F.R. § 214.14(b)(3) “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). 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.*

We acknowledge the petitioner’s statements that she was frightened when she saw her alleged perpetrator husband at the police station and felt that the police could not protect her from him. Although the petitioner’s hesitation is understandable given their relationship, she must nevertheless demonstrate her cooperation in the detection, investigation or prosecution of the qualifying criminal activity. The evidence, however, does not sufficiently demonstrate the petitioner’s helpfulness to the certifying agency and the certifying official has declined to certify the petitioner’s helpfulness. We lack the authority to waive the statutorily required certification described at section 214(p)(1) of the Act. Accordingly, the petitioner has not demonstrated that she satisfied the helpfulness requirement for U nonimmigrant classification under section 101(a)(15)(U)(i)(III) of the Act.

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). *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.