



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

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

In Re: 15738616

Date: FEB. 08, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under 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 Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was not the victim of qualifying criminal activity. After the Petitioner filed a motion to reopen and reconsider, the Director affirmed the previous decision, finding that the grounds of denial had not been overcome. The matter is now before us on appeal. We review the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director.

**I. LAW**

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act.

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “Qualifying criminal activity” is that involving one or more of the types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term “any similar activity” refers to criminal offenses in which the nature and the elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions and the 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 I&N Dec. 369, 375 AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner’s helpfulness in

the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; C.F.R. § 214.14(c)(2)(i). The petitioner must also provide a statement describing the facts of their victimization as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(i)-(iii). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Relevant Facts and Procedural History

The record reflects that the Petitioner is a native and citizen of Mexico who entered the United States without inspection in 2007. In 2009 the Petitioner was granted a Restraining Order to Prevent Abuse against her spouse under the Oregon Family Abuse Prevention Act (FAPA) and in 2012 she was granted a second restraining order. The couple divorced in 2014. In 2015 the Petitioner filed a U petition claiming to be the victim of domestic abuse by her spouse from 2008 until 2012.

With the petition, in response to the Director's request for evidence, and in a motion to reopen and reconsider the Director's denial, the Petitioner submitted a Supplement B signed by the presiding judge of [redacted] Oregon, Circuit Court; a police department incident report; temporary restraining orders; a letter from the police department; a personal affidavit; letters of support; and copies of legal studies and reference guides.

The Supplement B at part 3 lists citations for the criminal activity investigated or prosecuted as Oregon Revised Statutes (ORS) sections 107.700-735 (FAPA) and ORS 107.705 domestic violence. For a description of the criminal activity being investigated and/or prosecuted the Supplement B provides that the abuser threatened, assaulted, choked and pulled the Petitioner's hair, and that she filed a "FAPA" (a restraining order pursuant to FAPA) in 2009 and in 2012 which were signed by [redacted] circuit court judges. For known injuries the Supplement B provides that some incidents of abuse occurred in front of the Petitioner's minor children; that prior to coming to the United States the abuser threatened her and stabbed her with a knife; and that while in the United States he verbally abused her, pulled her hair, and choked her in 2008, threatened her and pushed her against walls in 2009, and threatened to kill her and take her children in 2012. For helpfulness the Supplement B indicates the Petitioner filed FAPA applications on two occasions and contacted authorities in 2012 after the abuser threatened to kill her.

An Incident Report by the [redacted] Oregon, Police Department, dated [redacted] 2012, identifies the Petitioner as "caller" with her spouse a "suspect". The Incident Report indicates that the Petitioner told an officer her ex-husband threatened to kill her, and she was referred to "courthouse for new RO." In 2019 the support services manager of the [redacted] Police Department responded to a query from the Petitioner's counsel by confirming that the Petitioner called the agency to report "domestic violence activity" and that she assisted and was helpful with the investigation. The letter provides no further detail.

In her affidavits submitted below, the Petitioner described verbal and physical abuse from her spouse in Mexico and in the United States where she sought restraining orders in 2009 and 2012. She maintained that after the first restraining order expired her spouse continued with threats, so she contacted police, showed them where her spouse was living at the time, and they encouraged her to file for another restraining order.

In denying the petition and affirming the decision in response to the Petitioner's motion to reopen and reconsider, the Director found that evidence did not establish the Petitioner was the victim of qualifying criminal activity and that the Oregon statutes identified on the Supplement B did not qualify as substantially similar to an enumerated ground listed in regulations. The Director noted the statutory citations on the Supplement B equate to temporary restraining orders but determined that the certifying official did not indicate he or any other law enforcement entity investigated domestic violence. The Director added that the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crime that was investigated with a qualifying crime. The Director concluded that obtaining a protection order did not qualify as reporting criminal activity to law enforcement and that although the Petitioner provided information to court in obtaining a protection order, such helpfulness was not relevant to adjudication of the U petition.<sup>1</sup> The Director determined that the judge who certified the Supplement B was not involved in the conviction or sentencing of the enumerated crime, and that a family court judge presiding over FAPA was not involved in the conviction or sentencing of domestic violence and the judge's involvement did not meet the definition of investigation or prosecution under 8 CFR 214.14(a)(5).

The Director further concluded that the Petitioner did not possess specific facts regarding the criminal activity to determine she is likely to provide assistance to investigation or prosecution, or that she meets the criteria for helpfulness, per 8 CFR 214.14(b)(2) and (3).

On appeal, the Petitioner contends that the Director wrongly focused on action taken by the civil court judge in issuing a restraining order to find it insufficient to substantiate investigation and prosecution while disregarding that she made a criminal report to a law enforcement agency in addition to seeking a civil restraining order.

## B. Qualifying Criminal Activity Was Detected

Oregon criminal law has no single crime of domestic violence, but the term is used to describe abuse between family or household members. At the time of the criminal activity against the Petitioner, the Oregon Revised Statutes (ORS) under Title 11 Domestic Relations, at section 107.705, provided the following definitions:

- (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:
  - (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
  - (b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.

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<sup>1</sup> The Director's denial also indicated that qualifying criminal activity must occur within the jurisdiction of the United States but that the majority of abuse leading to the protection order occurred in Mexico. However, in affirming the denial in response to the Petitioner's motion the Director did not further address jurisdiction.

(c) Causing another to engage in involuntary sexual relations by force or threat of force.

It defined “Family or household members” to include spouses and former spouses.

Title 14 Procedure in Criminal Matters Generally, ORS section 132.586. Domestic violence as an element of the crime, provided that:

(1) As used in this section, ‘domestic violence’ has the meaning given to that term in ORS 135.230.

(2) When a crime involves domestic violence, the accusatory instrument may plead, and the prosecution may prove at trial, domestic violence as an element of the crime. When a crime is so pleaded, the words ‘constituting domestic violence’ may be added to the title of the crime.”

In turn, and synonymous with the definition in FAPA, ORS 135.230(3) defined “domestic violence” as “abuse between family or household members,” and ORS 135.230(1)(a) defined “abuse” as “attempting to cause or intentionally, knowingly or recklessly causing physical injury[.]” Domestic violence may be proved as associated with any number of crimes, including assault, menacing, and strangulation. *See* ORS 132.586; *State v. McKarge*, 335 P.3d 1279, 1280-81 (Or. App. 2014); *State v. Bolton*, 310 P.3d 247 (Or. App 2021); *State v. Bigsby*, 342 O,3d 93 (Or. App. 2014).

A person who has been subject to domestic abuse may file a petition seeking an *ex parte* FAPA restraining order against the abuser. To obtain a restraining order under FAPA, a petitioner must offer evidence that they have been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and are in imminent danger of abuse from the respondent. *See* ORS section 107.710 and 107.718; *Rosiles-Flores v. Browning* 145 P.3d 328 (Or. App. 2006); *J. N. D. v. Dehkordi* 481 P.3d 722 (Or. App 2021).

The U.S. Ninth Circuit Court of Appeals, in *Szalai v. Holder*, 572 F.3d 975, 978 n.2 (9th Cir. 2009), stated that the essence of Oregon’s FAPA is to prevent acts of family violence through restraining orders and to provide legal sanctions for violations if the court orders are disobeyed. The Ninth Circuit and the Board of Immigration Appeals have both found that an individual convicted of violating a protection order was ineligible for cancellation of removal because of being convicted of an offense under section 237(a)(2)(E)(ii) of the Act; Crimes of domestic violence, stalking, or violation of protection order, crimes against children. *See Matter of Julio Medina-Jimenez*, 27 I&N Dec. 399 (BIA 2018). These decisions, in finding that violating a protection order can result in a criminal offense to include domestic violence, suggest that the person for whom the protection order was obtained is then victim of domestic violence.

For qualifying criminal activity to be investigated or prosecuted, the Act requires only a certification from a “Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity . . . .” Section 214(p)(1) of the Act. The regulation at 8 C.F.R. § 214.14(a)(2) and (3) define a certifying agency as a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity, and a certifying official as the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency;

or a Federal, State, or local judge. The definition of “investigation or prosecution” includes both “detection . . . as well as . . . prosecution, conviction, and sentencing” within its purview and without restriction as to what official or entity oversees or is responsible for each phase of the investigatory or prosecutorial process. 8 C.F.R. § 214.14(a)(5). Agency guidance provides that “[a] judge may sign the certification based on having conducted the sentencing in a criminal case. A judge may also sign based on having detected a qualifying crime during a proceeding (criminal or civil) over which [they] presided.” See U.S. Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, at 6, [https://www.dhs.gov/sites/default/files/publications/19\\_0731\\_uscis\\_u-visa-law-enforcement-resource-guide.pdf](https://www.dhs.gov/sites/default/files/publications/19_0731_uscis_u-visa-law-enforcement-resource-guide.pdf) [last accessed February 07, 2022]; see also 72 Fed. Reg. at 53020 (stating that the term “investigation or prosecution” should be “interpreted broadly”).

Oregon domestic relations law supports that a civil judge can detect the qualifying criminal activity of domestic violence, which then assists law enforcement investigation of other crimes. ORS section 107.720 provides that whenever a restraining order is issued, law enforcement is provided the order and it is entered into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the U.S. Department of Justice. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. It further provides that law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order.

In the instant case, the judge, by signing and certifying the Supplement B submitted with the Petitioner’s U petition, indicated that the Petitioner was the victim of criminal activity involving or similar to the qualifying crime of domestic violence. The same court twice granted restraining orders on the Petitioner’s behalf to protect her, thereby “investigated or prosecuted” the qualifying crime of domestic violence as contemplated by 8 C.F.R. § 214.14(a)(5). In certifying the Supplement B, the judge cited sections of the Oregon FAPA which address domestic violence. Although the Director’s decision determined that no police report was provided, the record contains a police Incident Report which indicates that the Petitioner reported to police that her ex-husband threatened to kill her and that police referred her for a second restraining order. A follow up letter from the police department confirms the Petitioner’s interaction with police.

In light of the above, a preponderance of the evidence demonstrates that the judge as certifying official detected domestic violence as having been perpetrated against the Petitioner. As such, 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 the entry of a new decision consistent with the foregoing conclusion.