



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

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

In Re: 17201985

Date: FEBRUARY 10, 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 (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner submits a statement of support arguing that she has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office (AAO) reviews 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 for further proceedings.

I. LAW

To establish eligibility for U-1 Nonimmigrant classification, a petitioner must show, *inter alia*, that they have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity perpetrated against them. Section 101(a)(15)(U)(i) of the Act; 8 C.F.R. § 214.14(b)(3). This requirement includes demonstrating that, since initiating cooperation, the petitioner “has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. 212.14(b)(3). The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’ credible and reliable information regarding, and helpfulness in the investigation or prosecution of, the qualifying criminal activity perpetrated against them.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

¹ The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim’s helpfulness, and the victim’s injuries.

II. ANALYSIS

A. Procedural and Factual History

The record reflects that in September 2015 the Petitioner filed her U petition with a 2015 Supplement B signed and certified by a sergeant in the [REDACTED] California Police Department (certifying official). In Part 3.1 of the Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of domestic violence and felonious assault stemming from criminal activity in [REDACTED] 2014. The narrative portion of the Supplement B indicated that the Petitioner's partner threatened her, stating that "if she did not obey him, he would take her [REDACTED] Mexico and she would disappear." The Supplement B described the Petitioner's injuries as a bruise on her shoulder and noted that the Petitioner "suffered numerous incidents of domestic violence previously, and that she was fearful of her abuser." The Supplement B also indicated that the Petitioner possesses information concerning the criminal activity and that she has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity. Further, the certifying official checked the box indicating that Petitioner had not been requested to provide further assistance or unreasonably refused to provide such assistance. The Petitioner submitted a second Supplement B in 2020 indicating that she was helpful to law enforcement and had not refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity.

The Petitioner submitted a statement with her U petition in which she asserted that from 2003 to 2014, she suffered from domestic abuse from her partner, the father of her two children. The Petitioner stated that, in [REDACTED] 2014, she fled her home with her children and entered a shelter because her former partner threatened to kidnap her and their children and disappear them in Mexico. This incident, the Petitioner explained, led her to file a restraining order against her partner in [REDACTED] 2014. The Petitioner indicated that during the investigation of the domestic violence, the police also investigated the potential sexual abuse of her daughter by her former partner, which included a [REDACTED] 2014 interview with her children at the shelter. She further stated that when prosecutors asked her to participate in a pretextual call² with her former partner, even though she had a restraining order against him, she declined because she was terrified of him and the possibility that he could find her and their children. The record contains an [REDACTED] 2015 police report indicating that the investigating police officer called the Petitioner "and informed her of the [District Attorney]'s reason for not prosecuting the case. [The officer] explained the premise of a controlled phone call and asked if [the Applicant] would be willing to call . . . she said she understood the importance of the call but was not willing to reach out to him. She stated that she has not heard from the [abuser] recently, and she and her daughters are in a good place."

After considering the evidence in the record, the Director highlighted the above-referenced police report which indicated that the District Attorney declined prosecution due to lack of visible injuries, independent witnesses, and the Petitioner's refusal to participate in a requested pretextual call to her abuser. Based on this evidence, the Director denied the U petition, concluding that the Petitioner did

² Typically, a pretextual telephone call is a "recorded telephone call between the victim and the suspect. The call is usually initiated by the victim under the supervision of a police officer, and the suspect is not aware the call is being recorded. The purpose of the call is to solicit incriminating statements from the suspect." See US Department of Justice, Office of Justice Programs, Using "Pretext" Phone Calls in Sexual Assault Investigations (1999), <https://www.ojp.gov/pdffiles1/nij/179946.pdf>.

not establish that she had not refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity.

B. The Petitioner Has Established That She Was Helpful in the Investigation or Prosecution of Qualifying Criminal Activity

As noted above, the helpfulness requirement includes demonstrating that, since initiating cooperation, the petitioner “has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. 212.14(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). On appeal, the Petitioner asserts that the Director erred in concluding that she did not establish that she was helpful to law enforcement and has not refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity. Upon de novo review, we agree with the Petitioner’s assertion.

As a preliminary matter, on both Supplements B, the certifying official indicated that the Petitioner was helpful to law enforcement and had not refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity. The record also indicates that the Petitioner obtained a restraining order against her former partner and that she and her family participated in interviews with law enforcement regarding the domestic violence and sexual abuse. We acknowledge that a police report in the record reflects the Petitioner declined to participate in a pretextual call requested by the District Attorney. However, that report also reflects that the Petitioner told the investigating officer that she did not want to participate in the pretextual call and reach out to her abuser because she had been able to avoid contact with him, and she and her daughters were in a good place. In her personal statement, the Petitioner further stated that when the District Attorney asked her to participate in a pretextual call with her abuser, even though she had a restraining order against him, she declined because she was terrified of him and the possibility that he could find her and their children. Considering the fact that she had escaped her abuser, obtained a restraining order against him, as well as her expressed fear of him and what might occur if she contacted him, the Petitioner has established by a preponderance of the evidence that the request for her to participate in the pretextual call was unreasonable. Thus, the evidence does not support the determination that the Petitioner refused or failed to provide information and assistance reasonably requested after reporting the domestic violence to law enforcement and cooperating in the investigation of the offense.

Based on the foregoing, the Petitioner has overcome the Director’s determination and established by a preponderance of the evidence that she was helpful in the investigation or prosecution of the criminal activity and has not refused or failed to provide assistance reasonably requested. Accordingly, the matter will be remanded to the Director for consideration of whether the Petitioner satisfies the remaining statutory eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The matter is remanded for the entry of a new decision consistent with the foregoing analysis.