



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

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

In Re: 21617714

Date: JUL. 22, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is now before us on appeal. 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 the issuance of a new decision.

**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” and “certifying official” to mean the “head of 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.” 8 C.F.R. § 214.14(a)(2), (3). The regulatory definition of “investigation or prosecution” includes the “detection . . . of a qualifying crime . . . , as well as to the

prosecution, conviction, or sentencing of the perpetrator of the qualifying crime . . . .” 8 C.F.R. § 214.14(a)(5).

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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, a citizen of El Salvador, filed her U petition in November 2015 based on physical and psychological abuse perpetrated by her ex-partner, J-O-F-.<sup>1</sup> With her U petition, the Petitioner submitted a Supplement B from September 2015 signed and certified by a district court judge with the [REDACTED] (Minnesota) District Court. The Supplement B listed a case number tied to a Petition for Order for Protection and Affidavit filed by the Petitioner in [REDACTED] 2009. In response to Part 3.1 of the Supplement B, which provides check boxes for the 28 qualifying criminal activities listed in section 101(a)(15)(U)(iii) of the Act, the judge selected “Domestic Violence.” In response to Part 3.3, which requests the statutory citations for the criminal activity being investigated or prosecuted, the judge cited to section 609.2242 of the Minnesota Statutes, which states that domestic assault is a misdemeanor and, “[w]hoever does any of the following against a family or household member as defined in section 518B.01, subdivision 2, commits an assault and is guilty of a misdemeanor: (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another.” Section 518B.01, subdivision 2, contains the Domestic Abuse Act under the Minnesota Statutes and contains the provisions for the issuance of orders for protection. In response to Part 3.5, which requests a description of the criminal activity being investigated or prosecuted, the judge stated that the Petitioner “was physically and verbally assaulted by J-O-F- while they lived together and after their relationship ended.” In response to Part 3.6, which requests any known or documented injury to the victim, the judge stated that the Petitioner “reported in her affidavit to the court that she was afraid [J-O-F-] was going to hurt her or her daughter.”

The Petitioner provided a copy of the order for protection issued by the court in her favor, which ordered J-O-F- to “not commit any acts of domestic abuse against the Petitioner,” which specifically included the acts of:

- A. Causing imminent physical harm, bodily injury, or assault
- B. Causing fear of imminent physical harm, bodily injury, or assault
- C. Making terroristic threats
- D. Engaging in criminal sexual conduct
- E. Interfering with an emergency phone call.

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<sup>1</sup> We use initials to protect the privacy of individuals.

Further, J-O-F- was ordered to “not go to or enter the residence of the Petitioner,” to “not enter or stay at the Petitioner’s home, even if invited by Petitioner or any other person,” to be excluded from the “minor child’s daycare,” and to “not contact the Petitioner in person, by telephone, by letter, by third party, or by any electronic means.” The Petitioner further submitted statements reiterating the incidents of abuse at the hands of J-O-F- as outlined in the Supplement B, as well as a copy of the Petition for Order for Protection and Affidavit, where she described the incidents of abuse directly to the court. In her affidavits, she recounted an incident in [ ] 2009, after she decided to move out of the home she shared with J-O-F-, where he pulled her by her hair, told her to get out of the house, and threatened to take the Petitioner’s daughter from her and leave the US. The Petitioner recounted an additional occasion in [ ] 2009 where J-O-F- pushed her, raised his fists and threatened to hit her, as well as calling her names and making further threats to keep her daughter from her.

The Director denied the U petition, determining that the Petitioner had not provided a properly executed Supplement B. The Director stated that because the Supplement B was signed “by the judge who presided over a civil protection hearing . . . the judges (*sic*) involvement does not meet the definition of “investigation or prosecution” set forth at 8 CFR 214.14(a)(5) because it does not appear an investigation or prosecution of criminal activity ever took place.” In making this determination, the Director relied on language from the preamble to the U nonimmigrant status regulations stating that “detection of criminal activity is within the scope of a law enforcement officer’s investigative duties” and that “[j]udges neither investigate crimes nor prosecute perpetrators.” Interim Rule, *New Classification for Victims Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53020 (Sept. 17, 2007).

#### B. Certifying Official

On appeal, the Petitioner asserts that the Director’s decision “makes an error of fact and law by referring to the Judge who issues the Order for Protection in this case as a “family law judge” [who] cannot detect a crime,” and states that, “the [District Court Judge] who issued the OFP (order for protection) was not operating as a “family law” judge and has the full authority of the District Court to preside over criminal and civil matters.” The Petitioner further asserts, “[t]he Judge in this case “detected” a crime by making the finding that the Petitioner had alleged credible acts of domestic abuse, acts which constitute crimes under Minnesota law, and that the Petitioner was entitled to issuance of the OFP.” She maintains that, through the investigation of the facts and issuance of the order for protection in this case, the judge detected the qualifying crime of domestic violence. In support of this assertion, the Petitioner notes that the Minnesota Constitution, Article VI, Section 3, states that District Court has “original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.”

In the instant matter, the Petitioner has submitted sufficient evidence to demonstrate, by a preponderance of the evidence, that the judge in her case detected domestic assault as having been perpetrated against her, granted orders of protection on her and her children’s behalf, and thereby “investigated or prosecuted” the qualifying crime of domestic violence as contemplated by 8 C.F.R. § 214.14(a)(5).

We acknowledge that, as highlighted by the Director, the language in the preamble to the U nonimmigrant status regulations indicates that the detection of criminal activity falls within the

scope of a law enforcement officer's duties, as opposed to those of a Federal, state, or local judge. 72 Fed. Reg. at 53020. Critically, however, and as argued by the Petitioner on appeal, neither the Act nor the implementing regulations delineate a law enforcement official's or a judge's roles in such a way. Instead, the Act requires only a certification from a "Federal, State, or local . . . judge." Section 214(p)(1) of the Act. The regulatory definitions of both "certifying agency" and "certifying official" similarly and broadly include a "Federal, state, or local judge." 8 C.F.R. § 214.14(a)(2), (3). Finally, 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). In line with this inclusion, 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 July 20, 2021]; see also 72 Fed. Reg. at 53020 (stating that the term "investigation or prosecution" should be "interpreted broadly").

The judge in this case, 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 judge cited to domestic assault under section 609.2242 of the Minnesota Statutes as having been investigated or prosecuted as perpetrated against the Petitioner and stated that the Petitioner "reported the incidents and did not refuse to cooperate" with the proceedings. As argued by the Petitioner on appeal, this is supported by relevant Minnesota domestic abuse provisions. The Petitioner established that she was the victim of acts intended to create fear of immediate bodily harm and that J-O-F- intentionally inflicted or attempted to inflict bodily harm against her, as found in section 609.2242 of the Minnesota Statutes, and that said criminal activity was then detected by a judge.

As we note above, section 609.2242 of the Minnesota Statutes references the Domestic Abuse Act at section 518.B01, which includes the provisions for issuance of a protection order. The evidence in the record, indicates that as a result of the issuance of the protection order, the Petitioner was found to be the victim of domestic abuse at the hands of J-O-F- by the judge. The specific subsections cited in the protection order reflect that the J-O-F- was restrained under 518.B01 § 6(a)(1), (2), (9), and (10), specifically. See sec. 518.B01 of the Minnesota Statutes, in place at the time of the incidents, § 4 ("There shall exist an action known as a petition for an order for protection in cases of domestic abuse."), (b) ("A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought."), § 6(a) ("Upon notice and hearing, the court may provide relief as follows: (1) restrain the abusing party from committing acts of domestic abuse; (2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner . . . (9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment; (10) order the abusing party to have no contact with the petitioner whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means . . . ") (2008). Further, section 518.B01 § 13(a) indicated that law

enforcement would be notified of the protection order: “[a]n order for protection and any continuance of an order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.” (2008)

The Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the judge who certified the Supplement B in her case “investigated or prosecuted” the qualifying crime of domestic violence as contemplated by 8 C.F.R. § 214.14(a)(5). The Director’s determination to the contrary is withdrawn.

### III. CONCLUSION

Upon *de novo* review, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that the judge investigated or prosecuted qualifying criminal activity as having been committed against her. 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 further proceedings consistent with the foregoing analysis.