



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

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

In Re: 20915772

Date: MAR. 28, 2022

Appeal of Vermont 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not demonstrate that she was helpful in the investigation or prosecution of qualifying criminal activity. The Director further concluded that the Petitioner was inadmissible to the United States, and her Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), seeking a waiver of inadmissibility, had been denied. The Director also dismissed a subsequent motion to reopen and reconsider. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief asserting the Director erred. The Administrative Appeals Office 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 appeal for further proceedings consistent with the following opinion.

**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. 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).

The burden of proof is on a petitioner 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). To meet this burden, petitioners must submit, as required initial evidence, a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’ helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.<sup>1</sup> Section 214(p)(1) of the Act; 8 C.F.R.

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<sup>1</sup> The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of

§ 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)(1). 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).

## II. ANALYSIS

### A. Relevant Facts and Procedural History

The Petitioner filed her U petition in May 2015, accompanied by a Supplement B that was signed and certified by the Chief of Police of the [ ] Police Department in [ ] California (certifying official) in February 2015, based on criminal activity committed against the Petitioner in [ ] 2012. In part 3.1 of the Supplement B, the certifying official marked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “False Imprisonment,” “Sexual Assault,” and “Attempt to commit any of the named crimes.” At part 3.3, the certifying official cited to section 243.4(e)(1) of the California Penal Code (Cal. Pen. Code), relating to the offense of sexual assault and battery, as the specific statutory citation for the offense investigated or prosecuted as perpetrated against the Petitioner. According to the Supplement B’s description of the incident, the Petitioner’s ex-boyfriend “pulled her into a men’s bathroom, where he tried to take her shirt off as he kissed her, and covered her mouth with his hand as she yelled for help.” The description also indicates the Petitioner bit the perpetrator’s forearm when he tried to prevent her from leaving the bathroom stall. The certifying official noted that the Petitioner was a minor and that she “suffered psychological trauma and received therapy for several months” to address the “psychological effects of the sexual assault on [her] and her family.” At part 4, the certifying official marked boxes confirming the Petitioner “[p]ossesses information about the criminal activity described in part 3,” “has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity,” has “been requested to provide further assistance in the investigation and/or prosecution,” and has not “unreasonably refused to provide assistance in a criminal investigation and/or prosecution.” Regarding the Petitioner’s helpfulness, the certifying official stated that she “was helpful to the police by reporting the crime to both her high school police officer immediately following the assault and [ ] to a [ ] Police Detective, on the same day.”

The police report accompanying the Supplement B contained a description of the criminal activity that was consistent with that in the Supplement B. The police report narrative indicated the Petitioner was interviewed by an investigator and also participated in a “pretext phone call” that was recorded by the police during which she confronted the perpetrator regarding the incident to see if he would admit to the sexual battery. The police report noted that the Petitioner did not want to pursue criminal charges, that she just wanted the perpetrator to leave her alone, and that she was afraid that the perpetrator would send nude photographs of her to her mother. The report indicated that the case investigation was closed as unsubstantiated because, in part, there were no independent witnesses to the incident and the Petitioner did not want to pursue criminal prosecution of the perpetrator.

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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.

In response to the Director's request for additional evidence (RFE) to establish helpfulness, the Petitioner provided supplemental statements from her and her mother describing their efforts to follow-up with the police regarding their investigation of the crime and to seek a restraining order against the perpetrator. The statements assert that, despite their attempts to follow-up, the police inspector assigned to the case never responded to their messages nor requested additional information or assistance. The Petitioner also asserted in her supplemental statement that when she was initially interviewed at the police station, she responded in the affirmative to the inspector's question regarding whether she wanted to press charges. The Petitioner opined that the inspector may have misunderstood her because she also indicated that "all [she] wanted was for [the perpetrator] to leave [her] alone." In finding that the Petitioner did not establish her helpfulness in the investigation or prosecution of qualifying criminal activity and denying the petition, the Director noted that the record did not contain additional documentary evidence supporting the Petitioner's claims that she and her mother had attempted to follow-up with the investigation, requested a restraining order, or that she had expressed a desire to press charges.

#### B. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

On appeal, the Petitioner asserts that the Director erred in determining that although she was initially helpful to law enforcement, she later ceased being helpful when she allegedly indicated she did not wish to pursue charges against the perpetrator. The Petitioner argues that regardless of her preference regarding prosecution of the incident, the evidence in the record including the police report, her personal statements, her mother's statement, and the Supplement B sufficiently establish that she was helpful in reporting and assisting with the investigation of the qualifying criminal activity. She asserts that the police independently made the decision to not take any further action after she told multiple police officers what happened the day of the incident and attempted to follow-up afterward. She reasons that, as she explained in her supplemental statement, the inspector who interviewed her the day of the incident may have misunderstood her desire to press charges, and she maintains she never refused any requests for additional assistance made by law enforcement because no such requests were made. Similarly, she notes that the Director did not identify any reasonable requests made by law enforcement that she failed to honor. Moreover, she contends that even if she had expressed a preference to not press charges, such a preference would not reflect an unwillingness to cooperate and nor would it have impeded any investigation of the incident by law enforcement because in California the public prosecutor has the sole discretion to institute formal criminal proceedings. *See* Cal. Gov't Code § 26500 (West 2012).

In the present case, the Petitioner has sufficiently established her helpfulness in the investigation and prosecution of qualified criminal activity as required by section 101(a)(15)(U)(i)(III) of the Act and by regulation at 8 C.F.R. § 214.14(b)(3). The regulations require the Petitioner to show that "since the initiation of cooperation, [s]he has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3); *see also* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007) (indicating, within the preamble to the U nonimmigrant rule, that "USCIS is excluding from eligibility those . . . victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested" and that the statute imposes an "ongoing responsibility . . . to provide assistance, assuming there is an ongoing need for the applicant's assistance."). Here, nothing in the record indicates that the Petitioner refused or failed to provide information or assistance reasonably

requested by the [ ] Police Department at any point after she commenced her cooperation in its investigation of the qualifying criminal activity. To the contrary, the certifying official specified on the Supplement B that the Petitioner was helpful in the investigation and prosecution of the criminal activity perpetrated against her, that she did not unreasonably refuse to provide assistance in the investigation or prosecution, and that she was helpful “by reporting the crime to both her high school police officer immediately following the assault and [ ] to a [ ] Police Detective, on the same day.”

Although the police report indicates the Petitioner, who was a minor at the time of the incident, stated that she did not want to press charges and reflects that the case was closed as unsubstantiated, the record shows that the Petitioner did in fact report the events of the criminal activity to the police and fully cooperated with them during their investigation by participating in an interview and pretext phone call with the perpetrator in an attempt to determine if he would admit to committing sexual battery against her. The Petitioner’s communication of her preference to not press charges does not negate her helpfulness to the certifying agency or willingness to continue being helpful when reasonably requested. There is no indication that the certifying agency indicated that prosecution would be pursued, that her assistance was requested for further investigation of the incident, or that she refused to provide assistance at any time after her initial reporting and cooperation. In fact, the police report clearly indicates the case was closed as unsubstantiated for a number of reasons apart from her desire to not press charges, including that the perpetrator and the Petitioner gave different accounts of the incident and there were no witnesses to substantiate either account. Neither the Supplement B nor the police report indicate the Petitioner’s preference to not pursue charges carried any greater weight than the other reasons listed for the case’s closure. As such, the report does not indicate that the case was closed as unsubstantiated because of the Petitioner’s unwillingness to assist in the investigation and prosecution of the crime. Based on the foregoing, the evidence of record demonstrates that the Petitioner submitted sufficient evidence to establish, by a preponderance of the evidence, that she has been helpful, is being helpful, or is likely to be helpful, as imposed by statute and regulation.

### III. CONCLUSION

The Petitioner has demonstrated, by a preponderance of the evidence, that she was helpful in the investigation or prosecution of qualifying criminal activity. Therefore, we will remand the matter to the Director for consideration of whether the Petitioner has met the remaining eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.<sup>2</sup>

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

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<sup>2</sup> As previously noted, the Director also denied the petition after determining that the Petitioner was inadmissible to the United States and the applicable ground of inadmissibility had not been waived. However, the Director denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), seeking a waiver of inadmissibility, solely on the basis that her U petition had been denied. As her U petition is being remanded for further consideration and issuance of a new decision, the Director shall reopen and reconsider the waiver application if the Petitioner otherwise demonstrates eligibility for U nonimmigrant classification.