



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

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

In Re: 9166899

Date: JULY 24, 2020

Motion on Administrative Appeals Office 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 Form I-918, Petition for U Nonimmigrant Status (U petition). We dismissed the Petitioner’s appeal and subsequent motion to reopen and reconsider, as well as a second motion to reconsider.

This matter is now before us on a third motion to reopen and reconsider. The Applicant submits additional evidence and a brief asserting that she has demonstrated her eligibility for U-1 nonimmigrant classification. Upon review, we will grant the motion to reopen and remand this matter to the Director for further proceedings.<sup>1</sup>

**I. LAW**

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2).

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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 26 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).

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<sup>1</sup> As the Petitioner’s motion to reopen has been granted, her accompanying motion to reconsider is considered moot. As such, we need not consider the Petitioner’s assertions in support of her motion to reconsider.

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. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 &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; 8 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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Relevant Evidence and Procedural History

With her U petition, the Petitioner submitted a Supplement B certified by the [ ] California, Police Department Chief of Police, which indicated that the Petitioner was a victim of criminal activity involving or similar to the qualifying crime of witness tampering. However, the only statutory citation cited for the criminal activity investigated or prosecuted was "Cal. Penal Code Section 847 (Grand theft)." The Supplement B stated that the Petitioner was robbed by an unknown male, and that suspect told her that she should not report the crime to the police. The 2013 [ ] Police Department report underlying the incident, also submitted with the U petition, stated that the Petitioner was the victim of a theft by an unknown suspect and classified the incident as a grand theft under section 487 of the California Penal Code (Cal. Penal Code). The officer narrative stated that the Petitioner drove from a bank to her business with \$10,000, with her two small children in the back seat. The narrative then stated that, when she began to remove her child from a car seat through the rear driver's side door, an unknown suspect opened the front passenger door and removed the money from the front passenger compartment. It further stated that when the Petitioner yelled for somebody to call 911, the suspect replied, "Don't follow me, don't call the cops."

With her prior motion, the Petitioner submitted a second Supplement B, also certified by the [ ] Police Department Chief of Police. The second Supplement B differed from the first Supplement B by adding intimidation of witnesses and victims under "Cal. Penal Code 136.1(b)(1)" to the list of statutory citations for criminal activity that was investigated or prosecuted.

In response, we concluded that the Petitioner had not demonstrated that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against the Petitioner. *See* sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act (requiring that petitioners have been helpful, are being helpful, or are likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as documented on a certification from a law enforcement official); 8 C.F.R. §§ 214.14(a)(5) (defining "investigation or prosecution" of qualifying criminal activity as "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”) and 214.24(c)(2)(i) (providing that the requisite law enforcement certification must state, in pertinent part, that the petitioner “has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting”). We acknowledged that the Petitioner’s second Supplement B contained a citation to intimidation of witnesses and victims under section 136.1(b)(1) of the Cal. Penal Code, which she alleged was California’s equivalent to the qualifying crime of witness tampering. However, we noted that both the police report and original Supplement B in the record before the Director indicated that law enforcement officials responded to reports of a robbery, and classified and investigated the incident as a grand theft. We additionally noted that the second Supplement B was signed and certified nearly five years after the crime and over four years after the original Supplement B, and did not contain any statement from the certifying official or any other evidence credibly explaining the reason for the statutory citation addition, or identification of error in the original Supplement B.

B. The Petitioner Has Established That the [ ] Police Department Detected and Investigated the Qualifying Crime of Witness Tampering as Perpetrated Against Her

With her current motion, the Petitioner submits a third Supplement B, also certified by the [ ] Police Department Chief of Police. The third Supplement B again includes a citation to intimidation of witnesses and victims under section 136.1(b)(1) of the Cal. Penal Code as the statute investigated or prosecuted as perpetrated against the Petitioner. The certifying official additionally explains that the [ ] Police Department detected and investigated the crime of “witness tampering,” as the Petitioner reported that the suspect intimidated and threatened her not to call the police and report the crime committed against her. The certifying official further explains that California does not have a criminal statute entitled “witness tampering,” but that the statutory equivalent is intimidation of witnesses and victims under Cal. Penal Code section 136.1(b)(1). The certifying official last explains that arresting officers’ reports are “never intended to be the sole determining factor of all possible charges” as they are “limited in the facts available at the time they are responding to and determining how best to define the criminal activity they are investigating, all the while protecting the victim, the community, and trying to locate a dangerous suspect.” With the new relevant and credible evidence submitted on motion, the Petitioner has established, by a preponderance of the evidence, that the [ ] Police Department detected intimidation of witnesses and victims under section 136.1 of the Cal. Penal Code, California’s statutory equivalent to the qualifying crime of witness tampering, as perpetrated against her.

C. The Petitioner Has Established That She Was a Victim of the Qualifying Crime of Witness Tampering under 8 C.F.R. § 214.14(a)(14)(ii)

The regulations at 8 C.F.R. § 214.14(a)(14)(ii) contain two requirements that must be satisfied before a Petitioner may be considered a victim of witness tampering:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering . . . ; and

(B) There are reasonable grounds to conclude that the perpetrator committed the

witness tampering . . . at least in principal part, as a means:

- (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
- (2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

At the time of the offense against the Petitioner, Cal. Penal Code section 136.1(b)(1) provided that:

[E]very person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

- (1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

Cal. Penal Code § 136.1 (West 2013).

The Petitioner argues on motion that the totality of the evidence in the record, including two personal statements signed under penalty of perjury, a mental health evaluation, the police report, and the Supplement Bs, demonstrate that she was the victim of witness tampering.

As a preliminary matter, the Petitioner has established that she was directly and proximately harmed by the perpetrator of witness tampering, as she was the individual against whom the qualifying criminal activity was directly committed. In addition, the Petitioner has established reasonable grounds to conclude that the perpetrator committed witness tampering against her to avoid being brought to justice for his criminal activity, in accordance with 8 C.F.R. § 214.14(a)(14)(ii)(B)(1). As she asserts on motion, both the Supplements B as well as the underlying police report provide that the perpetrator of the offense threatened her not to call the police and report the crime committed against her. Moreover, we concluded above that the Petitioner has met her burden of demonstrating that the [REDACTED] Police Department detected section 136.1(b)(1) of the Cal. Penal Code as perpetrated against her, and that provision is violated when a person attempts to dissuade a crime victim or witness from reporting that crime to an officer, prosecuting agency, or judge.

As the Petitioner has satisfied the requirements of 8 C.F.R. § 214.14(a)(14)(ii), she has met her burden of establishing that she was a victim of witness tampering, qualifying criminal activity under 101(a)(15)(U)(iii) of the Act.

#### D. Remaining Eligibility Criteria

The Petitioner has overcome the sole ground for denial of her U petition, as she has demonstrated that she was a victim of the qualifying crime of witness tampering. On instant motion, the

Petitioner argues that she also meets the additional eligibility requirements for U nonimmigrant status. Specifically, the Petitioner contends that she suffered substantial mental abuse due to the commission of the qualifying crime, was in possession of information related to the qualifying criminal activity, was helpful to law enforcement authorities investigating the qualifying criminal activity, and the criminal activity occurred in the United States. The Director did not otherwise determine whether the Petitioner satisfied these additional eligibility requirements under section 101(a)(15)(U)(i) of the Act. Consequently, we remand the matter to the Director for issuance of a new decision regarding the Petitioner's eligibility under the remaining requirements.

**ORDER:** The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.