U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
VERMONT SERVICE CENTER

In the Matter of:	)	
	)	
	)	**Appeal of Denial of Form I-918 Petition**
	)	**for U Nonimmigrant Status**
	)	
Applicant:	)	
	)	
	)	
XXXX XXXX	)	
A123 456 789	)	
	)	
	)	

APPEAL OF A DECISION OF THE
DIRECTOR OF THE VERMONT SERVICE CENTER

Pursuant to 8 C.F.R. section 103.3, XXXX XXXX ("Ms. XXXX"), through her accredited representative, Trisha Teofilo Olave of the National Immigrant Justice Center, moves to appeal the U.S. Citizenship and Immigration Services' (USCIS) denial of her Form I-918, Petition for U Nonimmigrant Status Petition, which was denied on September 8, 2014. If Ms. XXXX's Form I-918 receives a favorable decision, Ms. XXXX requests reconsideration of the denial of her Form I-192, Application for Advance Permission to Enter as Nonimmigrant and her Form I-765, Application for Employment Authorization.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ms. XXXX is a native and citizen of Mexico, born on August 3, 1972 in Yuriria, Guanajuato, Mexico. Ms. XXXX is the sole provider of her two U.S. citizen children: SON (age 16) and DAUGHTER (age 7). See Birth certificates of children previously submitted with RFE response filed April 11, 2014.

Ms. XXXX last entered the United States without inspection through California, near San Ysidro in about November 1992. Ms. XXXX deeply regrets entering the U.S. unlawfully and her motivation at the time was to be able to financially support herself and her family. See Applicant's affidavit submitted with initial U Visa.

Over a period of approximately sixteen years, from 1995 until 2011, Ms. XXXX's husband, ABUSER ("Mr. ABUSER") continually abused her physically, emotionally and mentally. He punched her in the face for the first time a few months after they married on January 28, 1995. On March 22, 2009, Ms. XXXX called the Chicago Police Department to report an incident from March 15, 2009 in which Mr. ABUSER grabbed her by the neck and started choking her. See Exs. C, G. Ms. XXXX informed the police that her husband put his hand around her neck and told her he was going to kill her. She assisted the police in detecting the crime of domestic violence against her. It is unclear from the police report whether English or Spanish was used to communicate with Ms. XXXX. The police informed her of an order of protection and she was given a victim information sheet. See Ex. G.

On September 9, 2011, Mr. ABUSER threatened to kill Ms. XXXX and told her he had a knife. Ms. XXXX called the Chicago Police Department because she feared for her safety. CPD reported redness around Ms. XXXX's neck due to her husband placing both hands around her neck and attempting to strangle her. See Ex. C, H. Again, Ms. XXXX assisted the police in detecting the crime of domestic violence against her. After the reported incident on September 9, 2011, Ms. XXXX immediately petitioned for an order of protection, attended all court hearings regarding the orders and obtained a plenary, civil order of protection valid from January 11, 2012 until January 11, 2014. See Exs. C, I.

Ms. XXXX suffered severe physical, mental and emotional harm as a result of the

domestic violence she suffered at the hands of her husband, Mr. ABUSER. Ms. XXXX would be verbally and physically abused in front of her children and mother, causing her to live in fear not only for herself, but in fear for her family. Mr. ABUSER would also verbally insult the children and Ms. XXXX's mother. Ms. XXXX's young son, SON stepped in to defend her against Mr. ABUSER when he was only 13 years-old. See Applicant's affidavit submitted with initial U Visa and affidavit of applicant's son submitted with RFE response on April 11, 2014.

On November 14, 2012, Ms. XXXX filed an application for U Nonimmigrant Status with the Vermont Service Center (I-918/1-765 Receipt Number: EAC1303450707). Ms. XXXX's initial filing included a Form 1-918, Supplement B signed by the Chicago Police Department (CPD) on May 5, 2012 indicating that she was a victim of the qualifying crime of domestic violence. On October 16, 2013, USCIS issued a request for additional evidence (RFE). The Service requested a newly signed Form 1-918, Supplement B, because the form submitted was more than six months old at the time of submission. See Ex. F. In addition, the Service indicated that Ms. XXXX is inadmissible under section 212(a)(6)(A)(i) for being present in the U.S. without admission or parole and requested a Form 1-192, Application for Advance Permission to Enter as a Nonimmigrant. Ms. XXXX filed a response to the request by providing a new Form 1-918, Supplement B signed by CPD on November 20, 2013 and by submitting a Form 1-192. See *id* and Form 1-192 received by the Service on January 24, 2014.

On December 9, 2013, the Service issued a Notice of Action rejecting Ms. XXXX's Form 1-192 because the proper filing fee or fee waiver request was not included. On January 23, 2014, Ms. XXXX resubmitted her Form 1-192 with a fee waiver request which was received by the Service on January 24, 2014 (EAC1408050654). See 1-192 Receipt notice on record.

On January 28, 2014, the Service issued a second request for additional evidence. The

Service requested a statement from a certifying official indicating whether Ms. XXXX had been, is being or is likely to be helpful to the investigation or prosecution of the cited criminal activity. On January 28, 2014, the Service again requested the proper filing fee or fee waiver request for form I-192. However, the Form I-192 had already been received by the Service on January 24, 2014 and the receipt notice for the Form I-192 was issued on January 28, 2014. See *id.*

On April 11, 2014, Ms. XXXX filed a response to USCIS' request by providing a legal argument and sworn affidavit describing her cooperation with CPD and that her cooperation was reasonable given the circumstances. See Cover Letter of attorney ATTORNEY, Applicant's affidavit, Applicant's son's and mother's affidavits all submitted on April 11, 2014.

On September 8, 2014, USCIS denied Ms. XXXX's Form I-918 U Nonimmigrant Status, stating that Ms. XXXX could not establish that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency and since the initiation of cooperation; she has not refused or failed to provide information and assistance reasonably requested. See Ex. A. The Service also denied Ms. XXXX's Form I-192, Application for Advance Permission to Enter as Nonimmigrant and Form I-765, Application for Employment Authorization, given that the approvals are contingent upon the approval of the Form I-918. See Ex. B.

Ms. XXXX now moves to appeal USCIS' decision pursuant to 8 C.F.R. §103.3 given that the Service clearly erred in its decision to deny her U Nonimmigrant Status. In connection with this appeal, Ms. XXXX requests that USCIS reopen and reconsider her Forms I-765 and I-192, acknowledging their contingency upon the approval of Form I-918. USCIS may take favorable action prior to forwarding the case to the Administrative Appeals Office pursuant to 8 CFR §103.5(a)(5)(i) and 8 CFR §103.3(a)(2)(iii).

II. LEGAL ARGUMENT FOR APPEAL: USCIS ERRED AS A MATTER OF LAW WHEN IT DENIED MS. XXXX'S FORM I-918 PETITION FOR U NONIMMIGRANT STATUS

USCIS made an erroneous conclusion of law when it stated the following: "At this time, the evidence you submitted in support of your Form I-918 is not sufficient in establishing a continued ongoing helpfulness as required by the U-visa regulation." See Ex. A. The U visa regulations found at 8 CFR § 214.14(b) do not in fact require that the applicant provide "ongoing helpfulness" to law enforcement. The regulations do not contain the language "ongoing helpfulness," rather, 8 CFR § 214.14(b)(3) states in relevant part:

> *Section (b) U Visa Eligibility Requirements:*
>
> *(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. [emphasis added}*

The USCIS adjudicating officer must take into consideration the pertinent language in the U Visa regulations regarding information and assistance *reasonably* requested since the initiation of cooperation. Since Ms. XXXX initiated cooperation with the Chicago Police Department, she did not refuse or fail to provide information and assistance reasonably requested.

A. It is not reasonable to expect Ms. XXXX to respond to CPD correspondence in English

Ms. XXXX has established and the Service has acknowledged that a language barrier existed when Ms. XXXX reported the incidents of domestic violence to law enforcement. Ms. XXXX's son, SON, who was 11 years-old at the time and who speaks English, called the police for her in March 2009. Due to the chaos and trauma Ms. XXXX experienced surrounding this reported

incident, it is difficult for her to remember if the officers spoke Spanish when they arrived.

Ms. XXXX called 911 in order to report the incident in September 2011. She did request that the operator send a Spanish-speaking officer but when the police arrived, they only spoke English. Ms. XXXX was forced to ask her son, SON, who was 13 years-old at the time to interpret for her. It was unreasonable for the CPD to request information and assistance from Ms. XXXX through the interpretation services of her child, especially due to the sensitive content discussed which involved both of his parents.

Although CPD contracts Language Line Services, a 24-hour, telephonic interpreter service, Ms. XXXX was not offered this service. See Ex. K. In December 2007 the Department of Justice's Office for Civil Rights (OCR) reviewed the language services at the CPD to assess for compliance under the Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968. See Ex. L. After interviewing CPD officers, the OCR found several shortcomings in regards to language access for limited English proficiency (LEP) persons.

First, the OCR found that the CPD does not have a policy in place requiring that the type of interpretation service used for assistance be recorded by either the responding CPD officer or the Office of Emergency Management and Communications (OEMC) operator. Therefore, the CPD officer responding to the call may not know that the caller requires an interpreter. See Ex. L, Pg. 4:

> *During the onsite interviews, many of the operators stated that they often resolve telephonic encounters with LEP persons without using Language Line, such as using their own language skills, the language skills of co-workers, or the language skills offriends orfamily members of the LEP individual. The operators stated that they sometimes note in the administrative paperwork that the*

operator used a non-Language Line interpreter for assistance; however, this practice is neither a CPD policy nor do operators consistently perform it.

The OCR report also mentions that operators will rely on the interpretation assistance of the "LEP caller's friends and family, including minors." CPD employees reported that in responding to on-site visits, they will often communicate with hand gestures if they do not speak the language of the LEP individual. "CPD employees commented that they can 'get by' in this manner and that they are 'able to piece together' information with the LEP person." See Ex. L, Pg. 10. CPD officers also mentioned allowing individuals to speak with them in "broken English." See Ex. L, Pg. 5. The CPD denied using friends, family or bystanders as interpreters although OCR reported that "virtually all employees, in every division and district station, stated in onsite interviews that they regularly use these individuals in responding encounters with LEP persons." See Ex. L, Pg. 10.

Further, the report states that the CPD does not have a policy requiring that a responding officer record the language preference of civilians while in the field. The report states on page 4: "Also, while CPD employees complete a contact information card to document encounters with members of the public, the card does not contain a reference to LEP status." Therefore, if an officer needs to follow up with an individual several days after a police report is made, it is not likely that an officer would remember if an individual requires interpretation or translation services when calling or sending letters to the individual.

Second, the OCR report states that CPD has access to several resources for interpretation services, but that CPD employees did not seem to be aware of many of them. For example, the CPD has developed documents to assist non-Spanish speaking officers in emergencies. However, the OCR reported that employees were not familiar with the documents and several stated that

they did not receive any training on working with LEP individuals. See Ex. L, Pg. 10. The report lists several informational brochures, pamphlets and letters which have been translated into Spanish by CPD. However, the OCR states on page 12:

> *Despite the CPD 's efforts to make a large amount of resources available in languages other than English, many employees that OCR interviewed were not aware of the translated materials. Several employees suggested to OCR that CPD consider translating certain documents, when infact the CPD had already translated them. Additionally, even when officers were aware of the availability of translated documents, it does not appear that many of these officers distributed them ...In atltlition, several employees could not identify one document that they provided to thepublic that was not in English.*

The OCR's 2007 report on the CPD's language access inconsistencies and shortcomings are consistent with Ms. XXXX's experiences in reporting the incidents of domestic violence both in 2009 and 2011. She spoke with an operator over the phone in September 2011 and requested that a Spanish-speaking officer come to her home. However, the message did not seem to have been relayed to the reporting officer, as he or she did not speak Spanish. See Ex. C. Ms. XXXX's minor son interpreted for her and it appears that she then received follow up correspondence in English. See Exs. C, D. The practices that Ms. XXXX experienced were critiqued by the OCR and they recommended that CPD "take further action to ensure that it is meeting its obligations under Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968." See Ex. L, Pg. 2. Therefore, it cannot be said that CPD reasonably requested information and assistance of Ms. XXXX.

The Mayor's Office of the City of Chicago published a New Americans Campaign m

November 2012 which recommends several initiatives aimed at improving the lives of immigrants in Chicago. See Ex. M. One of the initiatives recommended by the Mayor's office is to implement a City-wide language access policy, which the OCR also recommended specifically for CPD in their report from 2007. See Ex. L, Pg. 2. At the time Ms. XXXX reported the domestic violence incidents in 2009 and 2011, a city-wide language access policy had not been implemented. If the CPD had a language access or assistance plan, more immigrants who do not dominate English proficiently would "benefit from increased accessibility and predictability of services." See Ex. M, Pg. 36. In tum, the immigrant would be reasonably equipped to provide information or assistance to law enforcement, thus more effectively furthering the purpose of the U Visa.

It is clear that the CPD information or assistance provided to or requested of Ms. XXXX was not reasonably expressed or requested. Due to the inconsistencies of CPD's methods when recording language preferences of individuals calling operators or interacting with officers in the field as recorded in the OCR's report, it is clear that Ms. XXXX's experience was not unique and that she did not unreasonably refuse to cooperate with law enforcement since initiating cooperation. Both the OCR report in 2007 and the Chicago Mayor's Office of New Americans in 2012, have suggested language access or assistance policies be implemented, thus further demonstrating that Ms. XXXX was not unreasonable in her cooperation with the CPD.

B. It is not reasonable to expect Ms. XXXX to have understood the U.S. legal system during the time of the reported incidents

Due to the language barriers, Ms. XXXX did not understand the role of the police and did not understand the services they provided. Ms. XXXX submitted a personal declaration signed on April 10, 2014 in response to the Service's request for evidence. She mentions in paragraph five that her mother related to her that police officers visited her home on several occasions after the

second reported incident in September 2011. The police officers spoke no Spanish but Ms. XXXX's mother understood that they were looking for Ms. XXXX's husband, ABUSER because they repeatedly said his name. Sandra Wall, an attorney who contacted the CPD on behalf of Ms. XXXX, states that Sergeant James Eldrige, Sergeant of the Records Division of the CPD said that police would not have visited Ms. XXXX's home in order to follow up on the domestic violence incidents she reported. See Ex. D.

Ms. XXXX petitioned for a plenary order of protection against Mr. ABUSER during this time and officers would have been sent by the court to attempt to serve him with the order. Ms. XXXX's mother remembers officers looking for Mr. ABUSER on three occasions. See Ex. E. The court attempted to locate Mr. ABUSER to serve him on three occasions which is evidenced by the two Alias Summonses and the Order of Service by Publication. See Ex. I. It may be concluded that the officers' home visits were not related to the investigation of domestic battery reported in September 2011, but related to the order of protection Ms. XXXX petitioned for afterwards.

It is clear that Ms. XXXX did not understand the purpose for the officers' visits to her home which further demonstrates the severe confusion she faced due to the language barriers. See Ex. C. It is not reasonable to expect her to have understood the police's role, especially in light of her stated understanding of the court's role. See Ex. C. Ms. XXXX did not understand the role of the police when she reported the incidents and provided information and assistance to the police to the best of her ability.

III. MS. XXXX WAS HELPFUL TO LAW ENFORCEMENT

The Service must recognize Ms. XXXX's petition for a plenary order of protection as cooperation with law enforcement. See Exs. C, I 1. Ms. XXXX petitioned for and received a

Plenary Civil Order of Protection, obtained an emergency order of protection and attended all court hearing related to the orders. See Ex. I. On September 14, 2011, immediately after contacting law enforcement, Ms. XXXX filed a petition for an order of protection through the assistance of Spanish speaking attorneys at the court's Domestic Violence Legal Clinic. See Exs. H, I 1. Ms. XXXX attended each status hearing on October 5, 2011, October 26, 2011, November 16, 2011 and December 7, 2011 but her husband, ABUSER never appeared. See Ex. I 3-6. It is reasonable to conclude that law enforcement helped to introduce Ms. XXXX to the concept of orders of protection because she recalls being given a card with the domestic violence court's address See Ex. C. The police report corroborates Ms. XXXX's memory and states that she was given a "domestic violence info sheet," which normally includes information regarding orders of protection. See Exs. G, H.

The Service states that the description provided on Form I-918, Supplement B, on page 3, question 5 is contradictory to the certifying official's information on page 2. See Ex. A. This conclusion is incorrect. The Service only takes the description of CPD not being able to contact Ms. XXXX after the incidents into account and does not acknowledge that she was helpful at the time of making the reports. Neither does the Service acknowledge that Ms. XXXX provided information and assistance as was *reasonably* requested by law enforcement. The Service lists additional evidence received in support of Ms. XXXX's application on April 22, 2014 but fails to list the declarations from her mother and son. Ms. XXXX urges the Service to now properly acknowledge and consider her sworn declaration and the declarations of her mother and son as sufficient evidence that she cooperated reasonably with law enforcement. See Exs. C, E and Applicant's son's and mother's affidavits submitted on April 11, 2014.

Ms. XXXX acknowledges and understands that the purpose of the U Visa is furthered by

victims cooperating with law enforcement. The Service's denial notice mentions twice that users requested a statement from the certifying official indicating whether or not she was helpful in the investigation or prosecution. This is unnecessary because the certifying official from the Chicago Police Department signed a Form I-918, Supplement B on May 10, 2012 and November 20, 2013. On both occasions, he certified on page 2, in part 4, question 2 that Ms. XXXX has been, is being or is likely to be helpful to the investigation or prosecution and that she did not unreasonably refuse to cooperate. See Ex. F and Form I-918 Supplement B submitted with initial U Visa Application. This is because when both police reports were made Ms. XXXX provided a description of the incidents to the police to the best of her ability and at the time of reporting the incidents, she was helpful to law enforcement. Neither the Form I-918 Supplement B nor the police reports indicate that Ms. XXXX refused to provide information and assistance reasonably requested of her by CPD. See Exs. F- H.

In addition, at the time of reporting the incidents, Ms. XXXX assisted the CPD in identifying the crime of domestic violence perpetrated against her. The U Visa regulations require that the applicant have reasonably cooperated in an investigation or prosecution of the crime. The regulations, found at 8 CFR 214.14(a)(5) define an "investigation or prosecution" as including the **detection** of the qualifying criminal activity. Therefore, Ms. XXXX fully meets the requirement as the CPD classified the incidents as domestic battery on the police reports and certified that she was the victim of domestic violence on her Form I-918 Supplement B by checking the Domestic Violence box on page 1. The CPD cites 720 ILCS 5/12-3-a-1, the statute for battery on page 2 and lists her husband, ABUSER as the offender on page 3, again identifying the qualifying crime of domestic violence. See Exs. F- H.

The facts of Ms. XXXX's case are similar to the facts of a case appealed to the Office of

Administrative Appeals (AAO) with a decision date of July 26, 2010. See Ex. J. In the referenced case, the U Visa applicant's U Visa was denied because the Service director concluded the applicant had not been helpful in the investigation or prosecution of the crime. The AAO decision cites to the Supplement B signed in this case in which the Los Angeles Police Department certified that the applicant was helpful in the investigation and did not unreasonably refuse to provide assistance to law enforcement. The CPD also certified that Ms. XXXX was helpful and did not refuse to cooperate on page two of her Supplement B and therefore, this should also be considered as sufficient evidence of helpfulness to law enforcement, as it was considered in the referenced AAO decision. .S.ee Ex. F. The AAO sustained the appeal in the referenced case and affirmed that the detection of a crime is sufficient to demonstrate that the applicant was helpful to law enforcement in their investigation. See Ex. J. The case was then remanded back to the Service for a new decision on the Form I-918, Petition for U Nonimmigrant Status.

IV. CONCLUSION

In light of the foregoing, Ms. XXXX has demonstrated that USCIS erred as a matter of law when it denied her Form I-918, Petition for U Nonimmigrant Status and her Form I-192 Application for Advance Permission to Enter as a Nonimmigrant. USCIS' denial failed in their reading of the U Visa requirements found at 8 CFR § 214.14(b)(3) and did not acknowledge that the information or assistance requested of the applicant by law enforcement, must have been reasonably requested. Apart from USCIS' faulty determination regarding Ms. XXXX' s cooperation to law enforcement, USCIS does not make any other finding of ineligibility for U Nonimmigrant Status based on the evidence Ms. XXXX has submitted.

WHEREFORE, Ms. XXXX respectfully requests USCIS reopen and grant her Form I-

918, Petition for U Nonimmigrant Status or in the alternative, forward the appeal to the Administrative Appeals Office for consideration. Additionally, Ms. XXXX requests that her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant and Form I-765, Application for Employment Authorization be reconsidered and granted contingent on the Form I-918 adjudication.

Sincerely,

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October 8, 2014