



**To** VAWA UNIT  
VERMONT SERVICE CENTER  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

**FROM:** JULIE E. DINNERSTEIN

**DATE:** JANUARY 2, 2014

**RE:** RESPONSE TO THE REQUEST FOR EVIDENCE RELATING TO THE  
U NONIMMIGRANT STATUS PETITION, EAC 12 123 1234, OF  
KAREN SMITH, A# 200 123 456

With this memorandum, through counsel, Karen Smith, responds to the request for evidence (RFE) issued by U.S. Citizenship and Immigration Services (USCIS). Counsel, through her own administrative error, is submitting this response late and asks that USCIS is still able to consider this response.

Eligibility requirements for U nonimmigrant status

In order to be eligible for U-1 nonimmigrant status, the U nonimmigrant status petitioner must meet the following statutory requirements:

1. The U petitioner must be a victim of one of 28 listed criminal activities (or “any similar activity”). See INA § 101(a)(15)(U)(iii).
2. The criminal activity must have occurred in the United States or violated a law of the United States, whether federal, state, tribal, territorial or local. See INA § 101(a)(15)(U)(i)(IV).
3. The U petitioner must have suffered substantial harm as a result of the criminal activity. See INA § 101(a)(15)(U)(i)(I).
4. The U petitioner must have information about the criminal activity. See INA § 101(a)(15)(U)(i)(II).
5. The U petitioner must establish that he or she “has been helpful, is being helpful, or is likely to 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 investigating or prosecuting [the] criminal activity.” INA § 101(a)(15)(U)(i)(III).
6. “[A] Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating [the] criminal activity [or] an official of the Service” must attest to the helpfulness of the U petitioner “in the investigation or prosecution” of the criminal activity in a certification. INA § 214(p)(1).

## Eligibility of Karen Smith for U nonimmigrant status

The RFE indicates that Ms. Smith has satisfied USCIS with respect to most, but not all, of the criteria relating to U nonimmigrant status with her original submission.

1. USCIS is satisfied that Ms. Smith has been the victim of a qualifying criminal activity and has therefore met the requirements of INA § 101(a)(15)(U)(iii).
2. USCIS is satisfied that qualifying criminal acts were committed against Ms. Smith in the United States and has met the statutory requirement under INA § 101(a)(15)(U)(i)(IV).
3. USCIS, by posing no questions in the RFE, is presumably satisfied that Ms. Smith suffered substantial harm as a result of the criminal activity and thus has satisfied the requirements under INA § 101(a)(15)(U)(i)(I).
4. USCIS is satisfied that Ms. Smith has information about the criminal activity and has met the requirement of INA § 101(a)(15)(U)(i)(II).

There are criteria that USCIS believes Ms. Smith has not satisfied, however, which led to the issuance of the RFE. These criteria relate to the helpfulness requirement of INA § 101(a)(15)(U)(i)(III) and the related certification requirement of INA § 214(p)(1). Each of these criteria is explored in detail below.

### 5. INA § 101(a)(15)(U)(i)(III): Helpfulness

a. First, and in a manner that is most perplexing to counsel, the RFE includes a statement that “you must submit evidence to establish that you *reported* this qualifying criminal activity to *law enforcement*” (emphasis added).

#### i. Reporting

A thorough search of the relevant statutory and regulatory provisions does not include a “reporting” requirement. Ms. Smith did indeed report the criminal activities—specifically, violations of New York Penal Law §§ 240.20 (Disorderly Conduct), 240.25 (Harassment In The First Degree), 240.26 (Harassment In The Second Degree), 240.30 (Aggravated Harassment In the Second Degree), 120.00 (Assault In The Third Degree), 120.05 (Assault In the Second Degree), all of which are also, by operation of law under New York State Family Court Act § 812, “Family Offenses” when committed between persons with certain familial relations. The report, made by Family Offense Petition included as Exhibit 10 in the original submission of Ms. Smith, was made to a judge in New York Family Court, which judge has concurrent jurisdiction with New York Criminal Court to preside over the aforementioned criminal activities in New York State committed between persons of certain family relations. See New York State Family Court Act §812. Nonetheless, the “reporting” is not relevant to an analysis of eligibility for U nonimmigrant status because, as noted, no such “reporting requirement” exists.

#### ii. Law Enforcement

In addition to indicating that Ms. Smith has failed to establish that she meets the non-existent “reporting” requirement, the RFE states that Ms. Smith has failed to have required contact with “law enforcement.” It is worth noting that there is no independent “law enforcement”

requirement. Rather, statutory and regulatory references to “law enforcement” are accompanied by reference to a series of government actors who may play a role in the investigation or prosecution of criminal activities. Specifically, both INA §101(a)(15)(U)(i)(III) and INA §214(p)(1) reference “law enforcement official[s]” in a much longer list of government actors: “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 investigating or prosecuting [the] criminal activity.” The relevant U nonimmigrant status regulation, 8 CFR §214.14(a)(2), in summarizing the government entities (called “certifying agenc[ies]”) reads as follows:

Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

Thus, as noted above, Ms. Smith has indeed reported the criminal activity to a relevant government actor, specifically, a judge authorized by New York State to preside over allegations of violations of certain criminal statutes, the fact that she may not have reported to “law enforcement,” whatever that term might mean, is not relevant to an analysis of Ms. Smith’s eligibility for U nonimmigrant status.

b. Helpfulness

Second, in contrast to the non-existent “report[ing] criminal activity to law enforcement” requirement which the RFE indicates Ms. Smith has not met, the RFE does find that Ms. Smith has filed to meet the statutory and regulatory requirement of helpfulness. Specifically, the RFE states: “While USCIS does not doubt your claim that you are the victim of domestic violence, you must submit sufficient evidence to establish that you reported this qualifying criminal activity to law enforcement, and are being or are likely to be helpful to the investigation or the cited criminal activity by regulation.” The statement in the RFE linking the “helpfulness” to “report[ing]” and “law enforcement” suggests that the USCIS adjudicator may be confused as to whom a U petitioner must be helpful.

Ms. Smith, as noted above, filed a Family Offense petition indicating the many provisions of New York State Penal Law violated by Michael Jones, submitted as Exhibit 10 in Ms. Smith’s U nonimmigrant status petition. An Order of Fact-Finding and Disposition indicates Ms. Smith submitted proof, including photographic evidence, and provided testimony to the Court with respect to the criminal activities committed against her by Mr. Jones. The Order of Fact-Finding and Disposition was submitted as Exhibit 4 in Ms. Smith’s U nonimmigrant status petition. And, of course, Ms. Smith submitted a signed Form I-918, Supplement B as Exhibit 1 in Ms. Smith’s U nonimmigrant status petition. The Form I-918, Supplement B signed by New York State Judge Monica Drinane. In light of these submissions, it is hard to understand how USCIS finds that Ms. Smith has failed to meet the statutory and regulatory requirements of helpfulness. It seems likely that there has been some confusion on the part of the USCIS adjudicator with respect to the government entity to whom a U petitioner must be helpful which has led to an erroneous finding that Ms. Smith was not helpful when in fact the evidence clearly establishes her helpfulness to the court and judge presiding over the adjudication of the criminal activities.

Ms. Smith' helpfulness is explored further below in a discussion of the Form I-918, Supplement B requirement.

6. INA § 214(p)(1): Certification

In order to be eligible for U nonimmigrant status, it is not enough to meet the helpfulness requirement described at INA §101(a)(15)(U)(i)(III). One must also submit a certification from “a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating [the] criminal activity [or] an official of the Service” attesting to the helpfulness of the U petitioner “in the investigation or prosecution” of the criminal activity in a certification. See INA § 214(p)(1). Because the USCIS adjudicator seem to mistake the certification requirement as one limited to a certification of “law enforcement” relating to “reported” criminal activity, the Form I-918, Supplement B signed by New York Judge Monica Drinane and submitted as Exhibit 1 in Ms. Smith' U nonimmigrant status submission may not have been given proper weight. Below the requirements relating to the U certification are reviewed along with a description of how Ms. Smith' already submitted certification meets the relevant criteria.

a. 8 CFR § 214.14(a)(12) states that a U nonimmigrant status certification means Form I-918, Supplement B, ‘U Nonimmigrant Status Certification,’ which confirms that the petitioner has been helpful is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.” There is no dispute that Ms. Smith has submitted a certification on Form I-918, Supplement B which contains the relevant confirmation.

b. 8 CFR § 214.14(a)(2) explains that a “[c]ertifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” In New York State, Criminal and Family Court judges have concurrent jurisdiction over certain violations of New York Penal Law where there is a delineated familial relationship between the perpetrator and the victim. See New York State Family Court Act § 812. Ms. Smith has submitted a certification signed by New York Family Court Judge Monica Drinane after the conclusion of a hearing over certain Family Offenses, which are also, by definition, violations of New York State Penal Law. Therefore, the certification she submitted comes from a qualifying “[c]ertifying agency.”

c. 8 CFR § 214.14(a)(2) explains that a “[c]ertifying official means (i) [t]he head of the 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 (ii) [a] Federal, State, or local judge.” Ms. Smith has submitted a certification signed by New York Family Court Judge Monica Drinane after the conclusion of a hearing over certain Family Offenses, which are also, by definition, violations of New York State Penal Law. Therefore, the certification she submitted was signed by a qualifying “[c]ertifying agency.”

d. Finally, 8 CFR § 214.14(c)(2)(i) provides a detailed and comprehensive summary of all that must be contained within the U nonimmigrant status certification on Form I-918, Supplement B:

The certification must state that: the person signing the certificate is the head of the 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 is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity"; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

Ms. Smith submitted a U certification from a New York State Judge, Monica Drinane, a qualifying certifier, on behalf of the New York State Family Court, a qualifying certifying entity with responsibility for investigating and presiding over the adjudication of qualifying criminal activities, which certification indicated Ms. Smith' helpfulness in the investigation of criminal activities committed against her in New York State in violation of certain New York State laws. Ms. Smith' U certification therefore establishes she meets the "helpfulness requirement."

### Conclusion

In light of the discussion above, it seems that the RFE was issued solely on the basis of a confusion on the part of the adjudicator that there is existed a requirement that a qualifying activity must have been "reported" to "law enforcement." A review of the relevant statutory and regulatory provisions establishes that there is no such narrow requirement and that the broader requirements relating to helpfulness with relevant certifying officials has been met by Ms. Smith. Counsel therefore asks that Ms. Smith' U nonimmigrant status petition be approved

Should you have any questions, please do not hesitate to contact me by telephone at (646) 373-5327 (as I am currently out of the office and unable to check my voicemail prior to January 22, 2013, although after that time, I may be reached in the office at (718) 508-1251), by fax at (347) 788-4558, by mail at Sanctuary for Families/ 198 E 161<sup>st</sup> Street, 2FL/ Bronx, NY 10451 or by email at [julie@sffny.org](mailto:julie@sffny.org).