

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

JANE DOE,

Petitioner,

v.

ROANOKE POLICE DEPARTMENT,

Respondent.

Serve:

Tim Spencer, Roanoke City Attorney
215 Church Avenue SW, Room 464
Roanoke, VA 24011

PETITION FOR JUDICIAL REVIEW
PURSUANT TO VA. CODE §9.1-1502

Case No.

INTRODUCTION

1. Petitioner, “Jane Doe,”¹ [REDACTED] [REDACTED] (“Petitioner” or “Ms. [REDACTED] [REDACTED]” by counsel, pursuant to Va. Code §9.1-1502(B), challenges Respondent, Roanoke Police Department (“Respondent” or “RPD”), denial of her request to reissue Form I-918, Supplement B (“U visa certification”).

2. Federal law provides nonimmigrant status for certain victims of qualifying criminal activity, known as “U” visas. Federal regulation requires that every U visa application be accompanied by a U visa certification issued by a qualifying local, state, or federal agency (the “certifying agency”) responsible for the detection, investigation, or prosecution of the underlying crime for which the U visa status has been sought. The U visa certification attests that the applicant

¹ Petitioner seeks leave to file the title of the action under a pseudonym and keep this Petition “along with the record of all hearings and all other pleadings and papers filed” under seal to protect her identity from the public record pursuant to Va. Code §9.1-1502(C).

(1) was a victim of a qualifying crime and (2) was, is, or likely will be helpful in the investigation or prosecution of the crime. After obtaining a U visa, the noncitizen may apply for legal permanent residence, provided that they can prove that they complied with any further requests for assistance in the investigation or prosecution of the qualifying criminal activity, evidenced by an updated U visa certification.

3. In 2021, the Virginia General Assembly enacted critical legislation establishing uniformity and transparency across Virginia to make the U visa certification process more accessible to victims of crime. *See* Va. Code §§9.1-1500-1502. This includes publicizing certification request procedures, imposing statutory deadlines for local law enforcement agencies to respond to requests, and establishing an enforcement mechanism by providing for review by a Virginia circuit court if law enforcement agencies do not respond to requests by the statute deadline or improperly decline to certify. The law also incorporates privacy protections for U visa applicants at both the certification and circuit court stages. *Id.*

4. Ms. [REDACTED] is one of the individuals entitled to the protections of Va. Code §9.1-1500, *et seq.* She was a victim of domestic violence, a qualifying crime in [REDACTED]. She fully cooperated in the investigation and prosecution of the qualifying crime and was never unwilling or unable to assist. As a result, RPD provided her with an initial U visa certification in [REDACTED]. She is now eligible to become a legal permanent resident and requested that RPD, the certifying agency, reissue her a U visa certification.

5. Despite Ms. [REDACTED] eligibility, RPD has failed to respond within the statutory timeframe, thereby denying her meritorious request to reissue her U visa certification. RPD's denial was unsupported by any individualized determination regarding the merits of Ms. [REDACTED] request and is based on RPD's stated policy of not responding to any request

for U visa certifications (“No-Response Policy”). RPD’s No-Response Policy violates Va. Code §9.1-1500 *et seq.* and has resulted in the unlawful denial of Ms. [REDACTED] U visa certification request.

6. Pursuant to Va. Code §9.1-1502(B), Ms. [REDACTED] petitions this Court for review of the final administrative decision of RPD. In support of this petition for review, Ms. [REDACTED] represents the following:

PARTIES

7. Petitioner [REDACTED] was born in Guatemala in [REDACTED]. She has lived in Roanoke, Virginia, since [REDACTED] and currently resides at [REDACTED], Roanoke, Virginia.

8. Respondent, Roanoke Police Department is a city police department with its principal place of business in Roanoke, Virginia. Respondent is a “certifying agency” responsible for promptly responding to U visa certification requests from immigrant crime victims, pursuant to Va. Code §§9.1-1500-1502.

VENUE AND JURISDICTION

9. Venue and jurisdiction are proper before this Court pursuant to Va. Code §9.1-1502(B), as all parties are located in the city of Roanoke, Virginia.

10. This petition for review is timely filed under Va. Code Ann. §9.1-1502(B), because no more than 30 days have passed since Respondent’s response was due to Petitioner.

STATEMENT OF THE CASE

Relevant Statutory and Regulatory Authority

11. In 2000, Congress created the U visa for qualifying crime victims as a new form of immigration relief for noncitizen victims of violent crimes in the Victims of Trafficking and

Violence Act, understanding that undocumented immigrant crime and trafficking victims were reluctant to come forward to assist law enforcement for fear of adverse immigration consequences. *See* Pub. L. No. 106-386, Sec. 1513; 8 U.S.C. § 1101(a)(15)(U).

12. U visas afford temporary nonimmigrant status to victims of qualifying criminal activity who 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. 8 U.S.C. § 1101(a)(15)(U).

13. The criminal activity covered by the U visa statute includes, without limitation, rape, torture, trafficking, domestic violence, sexual assault, abusive sexual contact, stalking, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, attempt, conspiracy, or solicitation to commit any of these crimes. 8 U.S.C. § 1101(a)(15)(u)(iii).

14. Federal regulations require that a noncitizen seeking to apply for a U visa file a Form I-918 and must be accompanied by Form I-918, Supplement B, signed by a “certifying official” of a “certifying agency.” The certification must attest that “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.” 8 C.F.R. 214.14(c)(2)(i).

15. Three years after a noncitizen’s U visa is approved, they may seek to adjust their status to become a lawful permanent resident (obtain a green card), provided that, among other

things, they prove that after the approval of their U visa, they cooperated with any additional requests by the law enforcement agency responsible for the investigation or prosecution of the qualifying criminal activity. 8 U.S.C §1255(m)(1)(A); 8 CFR §245.24(e) (“To meet this evidentiary requirement, applicants may submit a newly executed Form I-918, Supplement B, ‘U Nonimmigrant Status Certification.’”).

Va. Code §§9.1-1500-1502 Requires Law Enforcement Agencies to Promptly Respond to Certification Requests

16. Va. Code §§9.1-1500-1502 went into effect on July 1, 2021. The statute was created to establish a uniform process for state and local law enforcement agencies to follow when in receipt of a request for U visa certification or endorsement of a qualifying crime victim.

17. A certifying agency is a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers as defined in Va. Code § 9.1-101 that has responsibility for the investigation or prosecution of a qualifying criminal activity. Each certifying agency shall designate at least one certifying official for its agency. Va. Code § 9.1-1500.

18. Under Va. Code. § 9.1-1500 *et seq.*, certifying agencies must respond to all requests for certification that they receive. § 9.1-1501(A). Certification requests may be submitted directly by the survivor of the crime or on the survivor’s behalf by individuals, including an attorney, a licensed clinical social worker, a guardian ad litem, an employee of a crime victim and witness assistance program, or a sexual assault services provider. § 9.1-1501(C).

19. Generally, certifying officials must respond to requests within 120 days. §9.1-1501(D). Upon receiving a request, the certifier is required to complete the certification form consistent with the statutory timeframes, or, if the certifier declines to complete the form, provide

a written explanation “setting forth the reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.” *Id.*

20. However, in instances where the law enforcement agency has already issued an initial U visa certification for a victim, the law mandates that the agency “complete and reissue a certification form within 90 business days of receiving a request from a victim to reissue the certification form.” §9.1-1501(E).

21. An applicant may petition the Circuit Court for review if the certifying agency fails to respond within statutory timeframes or unreasonably refuses to certify that an applicant was a victim of qualifying criminal activity. §9.1-1502(B). The circuit court must conduct a hearing within 30 days of such a petition being filed. *Id.*

22. The Petitioner must prove their eligibility for completion of a certification form by a preponderance of the evidence. *Id.* In addition, the Court must find that the certifying agency’s failure or refusal to certify the form was unreasonable. *Id.* Courts may consider whether the agency provided sufficient factual or legal justification for its failure or refusal to sign the certification, whether the Petitioner complied with requirements for requesting certification from the certifying agency, and whether circumstances exist justifying delay to avoid jeopardizing ongoing criminal investigations prosecutions, or safety. *Id.*

23. If the Petitioner prevails and the court finds that the failure or refusal to certify was unreasonable, “the circuit court shall make an award of reasonable costs and attorney fees” to the Petitioner. *Id.*

Ms. [REDACTED] Requests Re-Certification of Form I-918 Supplement B

24. Ms. [REDACTED] is a [REDACTED]-year-old resident of Roanoke, Virginia.

25. On February [REDACTED], Ms. [REDACTED] was physically assaulted [REDACTED] [REDACTED]. [REDACTED] punched Ms. [REDACTED] in the head, pulled her hair, and shoved her, causing her visible injuries. Ex. A at 8, 10. [REDACTED], RPD arrived at the scene. *Id.* Ms. [REDACTED] reported the details of the assault and her injuries to Sergeant Anderson of RPD. Ms. [REDACTED] cooperated with RPD's investigation, and as a result, [REDACTED] was charged with assault and battery, and Ms. [REDACTED] was issued an Emergency Protective Order. *Id.*

26. On April [REDACTED], Chief Perkins of the Roanoke Police Department provided Ms. [REDACTED] with a U visa certification attesting that she was a victim of a qualifying crime, had been helpful in the investigation and/or prosecution of the criminal activity, had not been requested to provide further assistance, and had not unreasonably refused to provide assistance in the investigation and/or prosecution of the crime. Ex. A, 9-11.

27. On April [REDACTED], Ms. [REDACTED] U visa application was approved by U.S. Citizenship and Immigration Services ("USCIS"). *Id.* at 12.

28. Three years have passed since her U visa was approved, and Ms. [REDACTED] is now eligible to apply to adjust her status to be a legal permanent resident.

29. Since receiving her initial certification, Ms. [REDACTED] has not refused or failed to provide RPD with any requested information and assistance regarding the qualifying criminal activity upon which her U visa is based.

30. Accordingly, Ms. [REDACTED] has met all the eligibility criteria and predicate requirements for the reissuance of her U visa certification.

31. On October [REDACTED], Petitioner, through her immigration counsel, emailed RPD, requesting that they reissue Ms. [REDACTED] U visa certification. Ex. A; Ex. B, 6.

32. On January [REDACTED], after hearing no response, Petitioner’s counsel followed up in an email to RPD’s Deputy Chief Stokes. Ex. B, 6. That same day, Deputy Chief Stokes replied, “Per our long standing practice we do not respond to UVisa requests. We are not required by state or federal law and our city attorney has advised we should not respond to these requests.” *Id.* In response, Petitioner’s counsel requested that Chief Deputy Stokes reconsider, explaining that RPD had initially provided Petitioner’s U visa certification. Deputy Chief Stokes responded, “No matter, we are not required to sign and our practice now is we don’t assist with UVisas.” *Id.* at 4, 5.

33. On February [REDACTED] Petitioner’s counsel again requested that Chief Deputy Stokes reconsider his refusal to certify pursuant to Va. Code §§ 9.1-1500-1502. *Id.* at 1, 2.

34. On February [REDACTED] Chief Deputy Stokes emailed in response that “The city attorney is reviewing and will respond as necessary.” *Id.* at 1.

35. Neither Petitioner nor her counsel received any further response from RPD.

36. After receiving Ms. [REDACTED] request to reissue a U visa certification on October 16, 2023, RPD was required to “complete and reissue” her certification within 90 business days, on February 19, 2024. Va. Code §9.1-1501(E).

37. RPD’s denial or failure to respond to Petitioner’s request also violated Va. Code § 9.1-1501(D) by failing to set forth “reasons why the available evidence [did] not support a finding that [Ms. [REDACTED]] is a victim of a qualifying criminal activity.” § 9.1-1501(D). RPD did not provide sufficient factual or legal justification for its failure or refusal to sign Petitioner’s certification; therefore, its decision was unreasonable.

38. An action is only “reasonable if the matter in issue is fairly debatable . . . when, measured by both quantitative and qualitative tests, the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions.” *Board of*

Sup'rs of Fairfax County v. Jackson, 269 S.E.2d 381 (S. Ct. Va. 1980) (articulating the standard for determining whether a county's refusal to rezone was unreasonable); *see also, e.g., County of Lancaster v. Cowardin*, 239 Va. 522 (S. Ct. Va. 1990) (articulating the “fairly debatable” standard of reasonableness in the context of conditional use permits). Thus, as is here, where an agency does not produce any evidence sufficient to make eligibility for certification fairly debatable, its refusal or failure to certify is unreasonable. *Id.*

39. Virginia Code §§9.1-1500 *et seq.*, went into effect nearly three years ago and clearly requires Virginia's law enforcement agencies, like RPD, to not only respond to all requests for certification but also make their certification procedures public. §9.1-1501(A). Unsurprisingly, given its unlawful policy of summarily denying requests for certification—RPD has not made its procedures public—contrary to the mandates of Va. Code §9.1-1501(A).

40. Petitioner requests an oral argument prior to the court's ruling on this matter.

COUNT I
(Judicial Review of Agency Decision, Va. Code §9.1-1502)

41. Ms. [REDACTED] repeats and incorporates the preceding paragraphs as if fully set forth herein.

42. As a “certifying agency,” RPD is empowered by statute to make final decisions on requests for U visa certifications, such as Ms. [REDACTED]

43. RPD's failure to respond to Ms. [REDACTED] request to reissue a U visa certification within 90 days by February 19, 2024, constituted a final agency decision pursuant to Va. Code §9.1-1502 in violation of Va. Code §9.1-1501(E).

44. RPD's failure to respond and reissue Ms. [REDACTED] U visa certification was unreasonable, was not supported by any factual or legal justification, based upon an error of

law, and otherwise not in accordance with law; all to the prejudice of Petitioner's substantive and procedural rights.

PRAYER FOR RELIEF

45. WHEREFORE, Petitioner respectfully requests that this Court issue the following relief:

- a. Declare that Respondent's refusal to provide certification to Petitioner was unreasonable;
- b. Execute the certification for I-918 Supplement B, certifying that the Petitioner is the victim of a qualifying crime;
- c. Declare that Respondent failed to respond to Petitioner's request within the statutory timeframe;
- d. Declare that Respondent's No-Response Policy is unlawful;
- e. Declare that Respondent must make their procedures for U visa certification "publicly available," pursuant to Va. Code §9.1-1501(A) within 90 days;
- f. Award fees and costs to Petitioner pursuant to Va. Code §9.1-1502(B).
- g. Grant all other relief that the Court deems just and proper.

Respectfully submitted,

/s/

Sophia Leticia Gregg, VSB No. 91582
AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 774-8242
sgregg@acluva.org

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on this 12th day of March 2024, the foregoing was uploaded to the Virginia Judiciary E-Filing System (“VJEFS”), causing a true and correct copy to be sent to counsel for the Respondent at the following address:

Tim Spencer, Roanoke City Attorney
215 Church Avenue SW, Room 464
Roanoke, VA 24011

/s/

Sophia Leticia Gregg, VSB No. 91582
AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 774-8242
sgregg@acluva.org

Date: 03/12/2024

Counsel for Petitioner