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[redacted]

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

D14

DATE: NOV 03 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
>
> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (III) the alien . . . 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 criminal activity described in clause (iii); and
>
> (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
>
> ***
>
> (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Pertinent Facts and Procedural History

The petitioner is a citizen of Bolivia who entered the United States on August 4, 1991 as a nonimmigrant visitor. On February 14, 2007, the petitioner was assaulted and injured by her brother-in-law who committed domestic violence against his wife and also assaulted the petitioner's other sister during the same incident. The petitioner filed the instant Form I-918 U petition on May 18, 2010. The director subsequently issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity; and for a new or updated U Nonimmigrant Status Certification, as the certification initially submitted was not signed within six months preceding the filing of the petition as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). The director found the petitioner's response to the RFE insufficient to establish her eligibility and denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and that she suffered substantial physical or mental abuse as a result of such victimization.

On appeal, counsel submits additional evidence and a brief reasserting the petitioner's eligibility. The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal fail to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

The Criminal Activity Perpetrated Against the Petitioner

The U nonimmigrant status certification was completed by [redacted] of the Victim Services Section of the Fairfax County, Virginia Police Department. On the certification at Part 3 regarding the criminal act, [redacted] indicated that the petitioner was the victim of assault under section 18.2-57 of the Virginia Code (VC). In describing the petitioner's involvement in the crime that was investigated and prosecuted and her injury, [redacted] stated that the petitioner was assaulted by her sister's husband "as she attempted to help her sister against [him]" and that the perpetrator pushed the petitioner down and kicked her leg, resulting in substantial injuries. In her description of the petitioner's helpfulness at Part 4 of the certification, [redacted] stated that the petitioner "assisted in both her sister's domestic violence case and her other sister's assault case against [the perpetrator], as well as testifying in her own assault case."

In her April 21, 2010 affidavit, the petitioner stated that between 2006 and 2007, her sister [redacted] separated from her husband and she and her baby son were living with the petitioner. On February 14, 2007, the petitioner recounted that [redacted] asked the petitioner, a friend and their other sister, Kathy, to go with her to pick up her infant son from her estranged husband's apartment. While the petitioner was waiting in her car, her friend came out of the apartment building holding Guelyi's son and told the petitioner that her brother-in-law was hurting her sisters. The petitioner ran inside the building and her brother-in-law grabbed her wrist, pushed her down and kicked her, badly bruising her body. Soon the police came and took the statements of the petitioner, her sisters and friend and they obtained protection orders against her brother-in-law. The petitioner reported that she helped the police investigate and prosecute her brother-in-law and that she was one of the witnesses at his trial. The police told the

petitioner that her brother-in-law was dangerous and the petitioner explained that she was scared of him and had suffered both physically and emotionally because of his assault.

The Offense Perpetrated Against the Petitioner is Not a Qualifying Crime

The record shows that the petitioner was the victim of simple assault under VC § 18.2-57. Simple assault is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). On appeal, counsel asserts that the petitioner was the victim of the qualifying crime of domestic violence because she was assaulted by her brother-in-law and the subpoena for the petitioner to appear as a witness "show[s] the crime was a domestic assault." Counsel focuses on the factual scenario surrounding the criminal incident rather than performing the requisite statutory analysis of the crimes involved.

Simple assault in Virginia is prosecuted, in pertinent part, as follows: "Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor . . . ." Va. Code Ann. § 18.2-57 (West 2011). In Virginia, assault constituting domestic violence is classified as a distinct offense, specifically:

> A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.
>
> * * *
>
> D. The definition of "family or household member" in § 16.1-228 applies to this section.

Va. Code Ann. § 18.2-57.2 (West 2011).

As referenced in Virginia's domestic violence statute, "'Family or household member' means . . . (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person . . . ." Va. Code Ann. § 16.1-228 (West 2011).

Under Virginia law, the elements of simple assault and domestic violence are not substantially similar. Although both crimes involve assault, simple assault lacks the element of the victim being a family or household member, which is requisite to the crime of domestic assault. Accordingly, the offense of which the petitioner was a victim, simple assault under VC § 18.2-57, is not substantially similar to the qualifying crime of domestic violence, referenced in this case as domestic assault under VC § 18.2-57.2.

On appeal, counsel asserts that the petitioner was the victim of domestic violence because her witness subpoena lists the charged crime as domestic assault.[1] However, as [redacted] clearly stated in the law

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[1] Counsel further claims that "the original charging documents show the crime was a domestic assault," but no such documents were submitted on appeal.

enforcement certification, the petitioner assisted in the prosecution of "her sister's domestic violence case" as well as "her other sister's assault case" and "her own assault case." The record thus indicates that the only domestic violence crime committed during the incident was against the petitioner's sister, not the petitioner herself. Moreover, the term "household or family member" is specifically defined at VC § 16.1-228 to include siblings-in-law only if they resided in the same home as the perpetrator. The record in this case shows that the petitioner was not residing with her brother-in-law at the time of his offense. Consequently, she could not have been the victim of domestic assault under VC § 18.2-57.2.

The relevant evidence demonstrates that the petitioner was the victim of simple assault and the record, as supplemented on appeal, fails to establish that simple assault under VC § 18.2-57 is similar to domestic violence or any other qualifying crime specified at section 101(a)(15)(U)(iii) of the Act.

Substantial Abuse

Qualifying criminal activity is requisite to each statutory eligibility criterion for U nonimmigrant classification. As the petitioner has failed to establish that she was the victim of qualifying criminal activity, she cannot meet any of the statutory requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act, including having suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity pursuant to subsection 101(a)(15)(U)(i)(I) of the Act. Accordingly, we do not reach the issue of whether or not the petitioner suffered substantial abuse as a result of the simple assault perpetrated against her.

Conclusion

The petitioner has not demonstrated that she was a victim of domestic violence or any other qualifying criminal activity, as defined at section 101(a)(15)(U)(iii) of the Act. She is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.