

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



Did

DATE: **MAY 22 2012** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 

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:

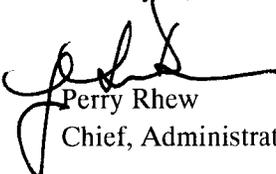
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (“the director”), denied the 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:

- (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).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who states he last entered the United States on or about June 5, 2005 on a visitor's visa with temporary authorization to remain in the United States. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on August 20, 2010. The petitioner states that on June 9, 2009, the vehicle he was driving was hit by another vehicle causing him to lose consciousness and to require stitches and other significant medical treatment. The director issued a request for evidence (RFE) to which the petitioner responded. Upon review of the record, including the petitioner's response to the RFE, the director found the evidence submitted insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 petition, providing additional documentation.

Analysis

The record contains a law enforcement certification (Form I-918 Supplement B), signed by [REDACTED] (certifying official"). At Part 3.1 the certifying official identified the criminal act of which the petitioner was a victim as an injury by a DUI driver. The certifying official cited California Vehicle Code (CVC) §§ 23153(a) and 23153(b) and California Penal Code § 12022.7 at Part 3.3 as the criminal activity investigated or prosecuted. According to the certifying official at Part 3.5, the petitioner was a victim of a DUI driver with injury.

California defines driving under the influence as, in pertinent part: "It is unlawful for any person, while under the influence of an alcoholic beverage or drug . . . to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle which act or neglect proximately causes bodily injury to any person other than the driver," Cal. Veh. Code § 23152(a) (West 2012) and "It is unlawful for any person who has a 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle." Cal. Veh. Code § 23152(b) (West 2012). Section 12077.7 of the California Penal Code describes the additional punishment for any person who personally inflicts great bodily injury on any other person.

The particular crimes that were certified are not specifically listed as qualifying criminal activity 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). The petitioner in this matter has not established that he was the victim of any qualifying crime. On appeal, the petitioner provides additional documentation describing his physical and psychological injuries as a result of the collision that occurred on June 9, 2009. However, as a threshold issue a petitioner must establish that the criminal activity of which he was a victim is either a crime listed at section 101(a)(15)(U)(iii) of the Act, or a

crime substantially similar to a statutorily enumerated crime. Only after the petitioner has established his victimization from qualifying criminal activity does USCIS assess whether a petitioner suffered substantial physical or mental abuse. Section 101(a)(15)(U)(i)(I). Here, the petitioner has failed to demonstrate that the criminal activity of which he was a victim – injury by a DUI driver – is qualifying under section 101(a)(15)(U)(iii) of the Act.

Conclusion

Although the petitioner was injured by his involvement in a vehicle accident caused by a drunk driver, the petitioner has not established that the offense of which he was a victim constituted qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that the offense was a qualifying criminal activity prevents him from meeting the statutory requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

As in all visa petition proceedings, the petitioner bears the burden of proving eligibility for U nonimmigrant status. 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. Accordingly, the appeal will be dismissed.

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