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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 20590
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

814

Date:

SEP 18 2012

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 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 in accordance with the instructions on 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 of the Vermont Service Center (the director) denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed in part and withdrawn in part. The appeal will be dismissed and the petition will remain denied.

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

Applicable Law

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a)(7)(B)(i) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part, that any nonimmigrant who:

- (I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period . . . is inadmissible.

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

Facts and Procedural History

The petitioner is a native and citizen of Lithuania who entered the United States in May 2001 as a B-2 nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on August 30, 2010. The director subsequently issued a Request for Evidence (RFE) to the petitioner, informing her that her Lithuanian passport was invalid, as it had expired. The director informed the petitioner that she must either submit a copy of a valid passport or file a Form I-192. In response, the petitioner submitted another copy of her invalid Lithuanian passport. Although the director found that the petitioner was statutorily eligible for U nonimmigrant status, he denied the petition because the petitioner was inadmissible to the United States under section 212(a)(7)(B)(i)(I) of the Act for her failure to possess a valid passport and file a Form I-192.

Subsequent to the denial of the petition, the petitioner filed a Form I-192 as well as an appeal of the denial of the Form I-918 U petition. On appeal, counsel requested the adjudication of the Form I-192 because the Lithuanian consulate would not extend the validity of the petitioner's passport. On August 14, 2012, the director denied the Form I-192 because the Form I-918 U petition had been denied.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the record, we concur with the director's decision to deny the petition and find, beyond and contrary to the director's decision, that the petitioner is statutorily ineligible for U nonimmigrant status.

For petitioners seeking U nonimmigrant status, section 212(a)(7)(B)(i)(I) of the Act requires them to possess a passport that is valid for a minimum of six months from the date of the expiration of their initial period of admission as a U nonimmigrant. The petitioner's passport was valid from December 17, 1999 until January 17, 2010, and counsel states that petitioner is unable to get its validity extended. The petitioner therefore cannot be granted U-1 nonimmigrant status because she is inadmissible under section 212(a)(7)(B)(i)(I) of the Act and her Form I-192 has been denied.¹

More importantly, however, the director's determination that the petitioner met all eligibility criteria for U nonimmigrant status except for her admissibility to the United States was erroneous and shall be withdrawn, as the evidence fails to demonstrate that she was the victim of qualifying criminal activity.²

The petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement), dated August 20, 2010 and signed by [REDACTED] (certifying official) of the Municipal Court of Philadelphia County, Pennsylvania. At Part 3.3, the certifying official indicated the statutory citations for the criminal activity that was investigated or prosecuted as sections 2706 (terroristic threats),³ 2709 (harassment),⁴ and 2701

¹ There is no appeal of a decision to deny a Form I-192. 8 C.F.R. § 212.17(b)(3). Because the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the AAO does not consider whether approval of the waiver application should have been granted. The AAO may only review whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

³ "A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another; (2) cause evacuation of a building, place of assembly or facility of public transportation; or (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience." 18 Pa. Cons. Stat. Ann. § 2706(a) (West 2012).

(simple assault)⁵ of Title 18 of the Pennsylvania Statutes (18 Pa.C.S.A.).

The particular crimes that were certified at Part 3.3 of the Form I-918 Supplement B are not specifically listed as a qualifying crimes 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).

Counsel asserted in response to the director’s RFE that the petitioner was the victim of the qualifying crime of felonious assault, and that the crimes listed on the Form I-918 Supplement B also related to the qualifying crimes of witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit these crimes. Counsel’s assertions, however, are without merit.

Counsel claimed that the petitioner was the victim of felonious assault because Pennsylvania’s terroristic threats statute includes “a threat to commit any crime of violence with intent to terrorize another, *including felonious assault.*” *Counsel’s Letter Brief* (Feb. 1, 2011) (emphasis in original). Counsel misreads the statute. Terroristic threats as defined at 18 Pa.C.S.A. §2706 includes no reference to felonious assault. 18 Pa. Cons. Stat. Ann. § 2706(a) (West 2012).

Counsel also asserted that the petitioner is the victim of the qualifying crime of felonious assault because the certified crimes of terroristic threats and simple assault under 18 Pa.C.S.A. §§ 2706(a) and 2701 are “crimes of violence.” Counsel cited caselaw finding that terroristic threats is a crime of violence aggravated felony at section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), and addressing the *mens rea* requisite to a crime of violence under 18 U.S.C. § 16(a). Neither of these cases are relevant to these proceedings as counsel failed to show that a crime of violence under 18 U.S.C. § 16 is equivalent to the qualifying crime of felonious assault under section 101(a)(15)(U)(iii) of the Act.

To show that the petitioner was the victim of the qualifying crime of felonious assault, counsel must

⁴ “A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same; (2) follows the other person in or about a public place or places; (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose; (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures; (5) communicates repeatedly in an anonymous manner; (6) communicates repeatedly at extremely inconvenient hours; or (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).” 18 Pa. Cons. Stat. Ann. § 2709(a) (West 2012).

⁵ “A person is guilty of assault if he: (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another; (2) negligently causes bodily injury to another with a deadly weapon; (3) attempts by physical menace to put another in fear of imminent serious bodily injury; or (4) conceals or attempts to conceal a hypodermic needle on his person and intentionally or knowingly penetrates a law enforcement officer or an officer or an employee of a correctional institution, county jail or prison, detention facility or mental hospital during the course of an arrest or any search of the person.” 18 Pa. Cons. Stat. Ann. § 2701(a) (West 2012).

demonstrate that the nature and elements of terroristic threats and simple assault under Pennsylvania law are substantially similar to a federal or state law definition of felonious assault. Counsel has not made that demonstration. See 8 C.F.R. § 214.14(a)(9). In addition, counsel ignores that the petitioner was certified as the victim of simple assault, a misdemeanor offense, and not certified as the victim of aggravated assault, which Pennsylvania classifies as a felony offense. Compare 18 Pa. Cons. Stat. Ann. § 2701(b) (West 2012) with 18 Pa. Cons. Stat. Ann. § 2702(b) (West 2012).⁶

Counsel also states that the certified crimes are directly related to the qualifying crimes of witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit these crimes. However, the certifying official provided no evidence that any of these crimes were investigated or prosecuted at any time in the past or that there is any intent to investigate or prosecute these crimes against the perpetrator in the future. The only crimes certified at Part 3.3 of the Form I-918 Supplement B were harassment, terroristic threats and simple assault under Pennsylvania law, all of which are not qualifying crimes or criminal activity substantially similar to any of the qualifying crimes enumerated at section 101(a)(15)(U)(iii) of the Act. Accordingly the petitioner has failed to establish that she is the victim of qualifying criminal activity.

Conclusion

The petitioner has not demonstrated her admissibility to the United States because she is not in possession of a valid Lithuanian passport and her Form I-192 was denied. Beyond and contrary to the director's decision, the petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act and, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility). As stated earlier in this decision, the director's statement that the

⁶ “A person is guilty of aggravated assault if he: (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; (2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty; (3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty; (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon; (5) attempts to cause or intentionally or knowingly causes bodily injury to a teaching staff member, school board member or other employee, including a student employee, of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school; (6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury; or (7) uses tear or noxious gas as defined in section 2708(b) (relating to use of tear or noxious gas in labor disputes) or uses an electric or electronic incapacitation device against any officer, employee or other person enumerated in subsection (c) while acting in the scope of his employment.” 18 Pa. Cons. Stat. Ann. § 2702(a) (West 2012)

petitioner met all eligibility criteria for U nonimmigrant status except for her admissibility to the United States is withdrawn.

In these proceedings, the petitioner bears the burden of proving her 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.

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