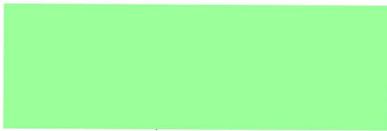




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 12 2013** 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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**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 and 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. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner submits a personal statement.

### *Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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[.]

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The regulation at 8 C.F.R. § 214.14(a) defines the following pertinent terms:

(9) *Qualifying crime or qualifying criminal activity*. . . The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

\* \* \*

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State or local law enforcement official, prosecutor, judge, or other Federal, State or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The petitioner is a native and citizen of Nigeria who entered the United States on January 8, 2006 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on June 6, 2011. On February 21, 2012, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On May 21, 2012, after considering the evidence of record, including counsel’s response to the RFE, the director denied the petition and the petitioner’s Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity and, therefore, could not show that she met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly.

On appeal, the petitioner contends that she is eligible for U nonimmigrant classification because she was the victim of a sexual assault and attempted kidnapping.

*Claimed Criminal Activity*

According to the petitioner in her personal statement, on June 3, 2006, several men robbed her as she was leaving a [REDACTED]. The petitioner claims that the assailants checked in her pockets for her wallet, and touched her sexually. The assailants took her wallet and left.

*Analysis*

In support of her I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] of the New York City Police Department (certifying official). The certifying official listed the criminal acts of which the petitioner was the victim at Part 3.1 as "Other: Harassment," and also checked the box for conspiracy to commit any of the named crimes, and then wrote in "Grand Larceny." At Part 3.3, the certifying official did not list any statutory citations for the crimes investigated or prosecuted, and instead wrote in, "N/A – Violation Level not in officers [sic] presence."<sup>1</sup> At Part 3.5, which provides for a brief description of the criminal activity, the certifying official wrote "N/A – Violation Level". Regarding any known injuries to the petitioner, the certifying official wrote at Part 3.6 "N/A." At Part 4.5, under the helpfulness of the victim section, the certifying official noted that the petitioner was very helpful in filing a complaint after being pick pocketed, and stated that the petitioner was not injured but did have property stolen from her.

While the certifying official stated at Part 3.1 that the petitioner was the victim of harassment and conspiracy to commit grand larceny, the law enforcement certification does not provide a statutory citation at Part 3.3 as required. Accordingly, it is unclear from the Form I-918 Supplement B which violation of New York law or a federal statute, if any, the certifying agency actually investigated or prosecuted. Without evidence from the certifying agency establishing the particular state or federal law that was violated, as well as evidence that such violation was investigated or prosecuted, the petitioner cannot demonstrate that she was the victim of a crime substantially similar to any other criminal activity specified at section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner cannot establish that she was the victim of a qualifying crime, as defined at section 101(a)(15)(U)(iii) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(a)(9). In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this reason.

Furthermore, even if the Form I-918 Supplement B did cite to the New York Penal Code for harassment and grand larceny, those are not specifically listed as 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

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<sup>1</sup> Although a handwritten note under this section cites to several sections of the New York Penal Code, the notation was not part of the original Form I-918 Supplement B and contains no initials or other indication that the notation was made by the certifying official.

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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, the petitioner submits another personal statement and claims that during the theft she was sexually assaulted and that it was also like an attempted kidnapping. She also claims that there was witness tampering as the assailants told her they knew where she lived. However, even if the factual circumstances of the theft were similar to an assault, kidnapping, or witness tampering, the proper inquiry is not an analysis of the factual details of the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). Here, the petitioner does not provide any new evidence or analysis to show that the elements of the crimes investigated are substantially similar to any of the qualifying crimes listed in the Act.

#### *Conclusion*

The record contains no evidence that the certifying agency investigated or prosecuted any qualifying crime. Furthermore, the evidence in the record and the petitioner’s statement fail to establish that the criminal offenses of which she was a victim, harassment and conspiracy to commit grand larceny, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including assault, witness tampering, or kidnapping. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act. As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish the other eligibility criteria listed at subsections 101(a)(15)(U)(i)(I) – (IV) 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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