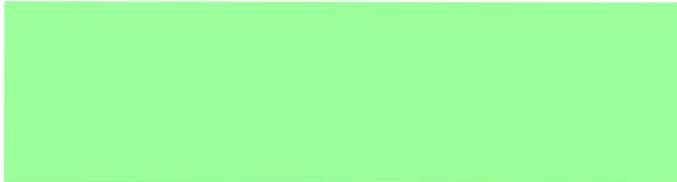




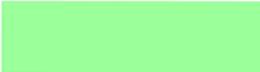
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 27 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:

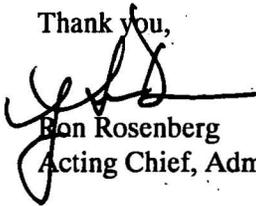


INSTRUCTIONS:

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

(b)(6)

Page 2

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 he was a victim of qualifying criminal activity, and therefore could not show that he met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, counsel submits a brief.

Applicable Law

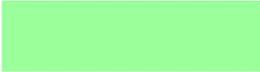
An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

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



(b)(6)

Page 3

(9) 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.

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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).

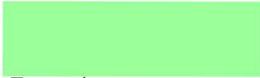
The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. 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 Peru who entered the United States on May 16, 2001 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on September 16, 2011. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he 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, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of a burglary, which he claims is similar to the qualifying crime of assault, and which should be included because the petitioner has been more affected than someone who has been the victim of perjury or obstruction of justice.

Claimed Criminal Activity

According to the petitioner in his personal statement, on January 23, 2011, several minors entered his house while he was not present and took several belongings of his young sons. When he and his son returned home, they saw that the door was broken and called the police. The individuals who



(b)(6)

Page 4

committed the burglary were caught and admitted to the crime.

Analysis

In support of his 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 Office of the State Attorney, Palm Beach County, Florida (certifying official). The certifying official listed the criminal acts of which the petitioner was the victim at Part 3.1 as "Other," and then listed "Burglary/Theft." At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as Florida Statute (Fla. Stat.) sections 810.02(3)(b) (burglary) and 812.014(2)(c)2 (theft). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner and his family were victims of burglary/theft. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner and his family have been directly impacted as indicated in the attachments. However, no attachments from the certifying official were included.

Under the Florida Penal Code, burglary is defined as follows, in pertinent part:

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

* * *

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

* * *

Fla. Stat. Ann. § 810.02 (West 2013)

Under the Florida Penal Code, theft is defined, in pertinent part, as follows:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2) . . .

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

* * *

2. Valued at \$5,000 or more, but less than \$10,000.

Fla. Stat. Ann. § 812.014 (West 2013)

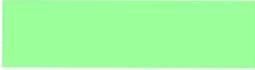
The particular crimes that were certified are not specifically listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature 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 inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Counsel first contends that burglary is a crime of violence as defined in 18 U.S.C. § 16. While this may be the case, the definition of a crime of violence is irrelevant in this case as the crime of violence definition applies to whether a conviction is considered an aggravated felony, not whether it is considered a qualifying criminal activity for purposes of a Form I-918 U petition. Counsel next asserts that the impact of the crime is substantially similar to that of an assault, and much more than the impact of witness tampering, perjury, or obstruction of justice, which are listed as qualifying crimes. Counsel offers no new evidence or legal analysis to support this claim. Furthermore, counsel suggests that the circumstances of the burglary are similar to an assault, but 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 actually investigated or prosecuted and the statutorily enumerated qualifying crimes. See 8 C.F.R. § 214.14(a)(9). Counsel provides neither citations nor legal analysis comparing the nature and elements of the crimes of burglary or theft to any qualifying crimes.¹

Counsel also asserts that as a matter of public policy, U.S. Citizenship and Immigration Services (USCIS) should choose to extend the protection of a U visa to victims such as the petitioner. Again, counsel provides no legal argument in support of this contention. The statute and regulations permit no exception to the requirement that the petitioner be a victim of a qualifying crime, and USCIS lacks authority to waive the requirements of the statute and the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Here, the evidence in the record and counsel’s contentions fail to establish that the criminal offenses of which he was a victim, burglary and theft, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including assault, witness tampering, perjury, or obstruction of justice. 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 he was the victim of a qualifying crime or criminal activity, he has also failed to establish the other eligibility criteria listed at section subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

¹ In fact, the definition of a burglary under Florida law specifically excludes situations that involve assault, so burglary cannot be substantially similar to the crime of felonious assault. See Fla. Stat. Ann. § 810.02(b)(3) (West 2013).



(b)(6)

Page 6

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 additional reason.

Conclusion

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.