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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 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: MAY 20 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

APPLICATION: 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), 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 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.

The director denied the petition because the petitioner did not establish that he was the victim of a qualifying crime or criminal activity. On appeal, counsel submits a brief and additional evidence.

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 --
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> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
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> (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;
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> ***
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> (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; stalking; 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; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.][1]

[1] The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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

> (9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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 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.
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> ***
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> (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.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who entered the United States on July 6, 1991, on a B-2 nonimmigrant visa. The petitioner filed the instant I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on November 22, 2011. On October 17, 2012, the director issued a Request for Evidence (RFE) that a hit-and-run vehicle accident is qualifying criminal activity and that the petitioner had suffered substantial physical or mental abuse based on a qualifying crime. Counsel responded to the RFE with a statement from the petitioner, criminal statutes, and medical documents for the petitioner, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

Hit-and-Run under Minnesota Law is not Substantially Similar to a Qualifying Crime or Criminal Activity

Pursuant to the regulations at 8 C.F.R. § 214.14(c)(1), a Form I-918 U petition must be accompanied by certain supporting documentation or "initial evidence," including a Form I-918 Supplement B signed by a certifying official who must state, in part, that the petitioner has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting.

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B, signed by Minneapolis, Minnesota Police Department (certifying official). At Part 3.1, the certifying official identified the crime as other: hit-and-run, and listed the statutory citation for the crime at Part 3.3 as accidents, driver to stop for accident with individual (Minn. Statutes § 169.09, subd. 1). At Part 3.5, the certifying official states the petitioner was the "victim of a hit-and-run in 2007 that caused him injuries to his back and neck." The certifying official notes in Part 4 of the Form I-918 Supplement B that the petitioner possesses information concerning the criminal activity, and that he cooperated with police officers by reporting the criminal conduct. The petitioner also submitted a Minneapolis Police Department report that stated the petitioner was involved in a hit-and-run accident, which resulted in non-life threatening injuries to his back and neck.

In his denial decision, the director determined that the petitioner had failed to establish that a hit-and-run accident is qualifying criminal activity. The crime of a hit-and-run accident is not specifically listed as a qualifying crime 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). Thus, the nature and elements of the hit-and-run offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 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.

On appeal, counsel asserts that the criminal activity in Minn. Statute § 169.09, subd. 1, is substantially similar to criminal activity in Minn. Statute § 609.50. Under Minnesota law:

> The driver of any vehicle involved in an accident resulting in immediately demonstrable bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident . . . and in every event, shall remain at, the scene of the accident, until the driver has fulfilled the requirements of this chapter as to the giving of information[.]

Minn. Statute § 169.09, subd. 1 (West 2007).

Minn. Statute § 609.50 states, in pertinent part: "[w]hoever intentionally does any of the following may be sentenced . . . (1) obstructs, hinders, or prevents the lawful execution of legal process, civil or criminal . . . ." Counsel claims that when the driver fled the scene of the accident with the petitioner, the driver intentionally prevented the lawful execution of a legal process and obstructed justice, which is a statutorily enumerated criminal activity. In addition, counsel claims that Minn. Statute § 169.09 is substantially similar

to Minnesota Statute § 609.223, assault in the third degree. Under Minn. Statute § 609.223, "[w]hoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment…or to payment of a fine….". Assault is defined as "an act done with intent to cause fear in another of immediate bodily harm or death" or "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Statute § 609.02, subd. 10 (West 2013). Counsel claims that since injury or death are included in section 169.09, this statute is similar to assault in the third degree. He states the petitioner suffered substantial bodily harm as a result of the hit-and-run accident, and continues to suffer from these injuries. Counsel claims that the police did not list obstruction of legal process and assault as criminal activity, because they do not know who the driver was.

No elements of hit-and-run accidents under Minn. Statute § 169.09, subd. 1, are similar to Minn. Statute §§ 609.50 and 609.223, obstruction of justice and assault in the third degree, respectively. The statute investigated in this case involves a driver who fled the scene of an accident which resulted in injury, and does not specify that the driver obstructed justice or intentionally caused substantial bodily harm as necessary components. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of a hit-and-run accident, she presented no evidence that she or any other law enforcement entity investigated obstruction of justice and/or felonious assault, and she only describes the petitioner being the victim of a hit-and-run accident when recounting the criminal activity that was investigated or prosecuted at Part 3.5. The only crime certified at Part 3.3 of the Form I-918 Supplement B was a hit-and-run vehicle accident, and the investigative report noted that the crime was "hit-and-run" with injury. There is no evidence that the certifying agency investigated or prosecuted obstruction of justice or an attempted or actual felonious assault. The petitioner has not shown that any crime other than a hit-and-run accident was investigated or prosecuted by the law enforcement agency.

As stated earlier, United States 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. 8 C.F.R. § 214.14(c)(4). We do not find that Minn. Statute § 169.09, subd. 1, is substantially similar to the qualifying crimes of obstruction of justice or felonious assault. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, a hit-and-run accident, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including obstruction of justice and felonious assault. 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.

Conclusion

Although the petitioner was injured by his involvement in a hit-and-run vehicle accident, he has not demonstrated that a violation of Minn. Statute § 169.09, subd. 1, is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. His failure to establish that the offense was qualifying criminal activity prevents him from meeting the statutory

requirements for U nonimmigrant classification at section 101(a)(15)(U) of the Act and his petition must be denied.

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.