

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



D15

Date: OCT 02 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:



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, 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 appeal will be dismissed.

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 denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity and she did not, therefore, meet the other qualifying criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submits a brief and copies of documentation already in the record.

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[.]

....

(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. 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 the Philippines who first entered the United States as a nonimmigrant fiancée on November 10, 1999. On January 13, 2010, the petitioner filed the instant Form I-918 U petition. The director issued Requests for Evidence (RFEs) on May 28, 2010 and September 24, 2010. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner filed a timely appeal of the denial of the Form I-918 U petition.

Claimed Criminal Activity

The petitioner stated in her January 2010 declaration that her U.S. citizen fiancé brought her and her children to the United States, whereupon he commenced to separate the petitioner from her children and to engage in activity which was physically, emotionally and sexually abusive. The petitioner stated that she was able to escape after he left her at her brother's house in California. The petitioner stated that she then travelled to New York in order to seek a safe place for her and her children to live. The petitioner stated that continued to harass her family in California and sent threatening letters in an attempt to blackmail her family. The petitioner stated that this prompted her brother to file reports of the harassment with the police. The petitioner stated that after several months followed her to New York claiming to have changed, but he again started to blackmail and threaten her and her family, as well as to verbally and physically abuse her. The petitioner stated that stayed with her in New York for two, two-week periods before he decided to leave. The petitioner stated that would frequently attempt to contact her by phone and letter, continuing to harass and threaten her life until she filed a police report on November 8, 2000. The petitioner stated that continued to make harassing phone calls and write harassing letters. The petitioner stated that she convinced authorities in Westminster, California to open an investigation into in 2009.

The petitioner stated in her December 2010 declaration that the police in New York dissuaded her from prosecuting in New York because they indicated that they would have difficulty in obtaining jurisdiction over because he resided in California.

The petitioner initially submitted a Form I-918 Supplement B, dated August 3, 2009, and signed by Detective of the Westminster Police Department (certifying official).² At Part 3.1, the

¹ Name withheld to protect identity of individual.

² The record also contains a U Visa Certification Form, dated July 28, 2009, which provides the same

certifying official indicated that the petitioner was the victim of abusive sexual contact, domestic violence, involuntary servitude, sexual assault and trafficking. At Part 3.3, the certifying official listed section 236.1(a) (human trafficking) of the California Penal Code (CPC) as the statutory citation for the crime investigated or prosecuted. Regarding a description of the criminal activity at Part 3.5, the certifying official stated: "Victim came to the United States from the Philippines approx. 10 years ago because of her relationship with the suspect [REDACTED]. Once victim arrived, the suspect made the victim a domestic and sex slave." The certifying official indicated at Part 3.6 that the known or documented injury to the petitioner was emotional abuse. At Part 4 regarding the helpfulness of the petitioner, the certifying official wrote: "Case is still being looked at to see if all the elements of human trafficking are being met. Statute of limitations is also being questioned as well."

In response to the director's RFE, the petitioner submitted a second Form I-918 Supplement B, dated August 5, 2010, and signed by the same certifying official. The criminal acts listed at Part 3.1 remained the same as the ones listed on the initially submitted Form I-918 Supplement B; however, at Part 3.3 the certifying official added the following statutory citations of the criminal activity being investigated or prosecuted: CPC §§ 266 (procurement by force or fraud) and 518 (extortion). The other parts of the Form I-918 Supplement B remained unchanged from the initially-submitted Form I-918 Supplement B, dated August 3, 2009. An unsigned letter from the certifying official indicated that the crimes of human trafficking, extortion and procurement by force or fraud were investigated, with no further details provided.

The record contains a New York City Police Department Report, dated November 9, 2000, which indicates that the petitioner reported that she was receiving threatening phone calls from [REDACTED] at her place of employment, that the criminal activity investigated was aggravated harassment, and that the petitioner did not wish to press charges against [REDACTED].

Analysis

U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(4). As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence to Satisfy the Eligibility Requirements. While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007).

information as the Form I-918 Supplement B, dated August 3, 2009.

On appeal, counsel contends that the information on the law enforcement certifications establishes the petitioner's victimization because the certifying official indicated that the petitioner was the victim of certain qualifying crimes. However, the two law enforcement certifications do not provide a consistent and reliable account of the alleged investigation entered into by the certifying agency. At Part 3.3 of the August 3, 2009 Form I-918 Supplement B, the only statutory citation listed at Part 3.3 was CPC § 236.1(a), human trafficking. The certifying official's statements at Part 4 that the "case is still being looked at" regarding the allegations of human trafficking and the statute of limitations failed to clarify if the certifying agency had actually initiated any investigation or prosecution of human trafficking committed against the petitioner. The certifying official also did not explain why he stated that the petitioner was the victim of domestic violence, sexual assault, abusive sexual contact and involuntary servitude at Part 3.1, but did not list the corresponding statutory citations at Part 3.3 as crimes the certifying agency was investigating or prosecuting.

The August 5, 2010 Form I-918 Supplement B introduced further conflicting information into the record by adding the statutory citations for extortion (CPC § 518) and procurement by force or fraud (CPC § 266) as crimes investigated or prosecuted at Part 3.3 without explanation, but not stating that the petitioner was the victim of those crimes at Part 3.1. In addition, Part 4 of the Form I-918 Supplement B remained unchanged from the information that the certifying official had provided in the initially-submitted Form I-918 Supplement B, dated August 3, 2009, and was not updated to explain how the petitioner was helpful in the investigation or prosecution of extortion and procurement by fraud or force as listed at Part 3.3. Overall, the law enforcement certifications along with the unsigned letter from the certifying official do not sufficiently demonstrate that a certifying agency investigated or prosecuted qualifying criminal activity of which the petitioner was a victim. 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).

Conclusion

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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

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