

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

[REDACTED]

\$15

Date: **OCT 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 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,

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 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), 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 qualifying criminal activity or that he suffered substantial physical or mental abuse based on such victimization. On appeal, counsel submits a brief and states, in part, that the petitioner is a victim of a qualifying crime and that he has suffered substantial mental abuse based on that criminal activity.

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 term *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. 8 C.F.R. § 214.14(a)(14).

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 India who first entered the United States as a C-1/D nonimmigrant crewmember on February 25, 2009. On May 28, 2011, the petitioner filed the instant Form I-918 U petition. On September 23, 2011, the director issued a Request for Evidence (RFE) requesting a properly executed Form I-918 Supplement B, as the submitted form did not list a statutory code for the alleged criminal activity being investigated and/or prosecuted at Part 3.3. The director also requested, among other things, evidence that the crime listed would be a crime related to one of the statutorily enumerated criminal activities. The petitioner responded with copies of the evidence previously submitted, as well as a brief, a copy of the relevant police report, and another declaration by the petitioner. The director found the evidence insufficient to establish the petitioner's eligibility and denied the Form I-918 U petition. The petitioner filed a timely appeal of the denial of the Form I-918 U petition.

Claimed Criminal Activity

The petitioner stated in his March 2011 declaration that he witnessed a hold up that occurred at his place of business, [REDACTED] on August 16, 2010. On September 30, 2010, he was present in the store when robbers came in; the petitioner snuck into the walk-in refrigerator and reported the robbery to the police.

The petitioner submitted a Form I-918 Supplement B, dated February 2, 2011, and signed by [REDACTED] of the Union City, California Police Department (certifying official). At Part 2, there is no head of the certifying agency listed. At Part 3.1, the certifying official indicated that the petitioner was the victim of robbery/theft. At Part 3.3, the certifying official failed to list a statutory citation for the crime investigated or prosecuted. Regarding a description of the criminal activity at Part 3.5, the certifying official stated that the petitioner was working at the store when "two armed men entered the store demanding money from the cash register. [The petitioner] was inside the walk-in refrigerator at the time of the robbery, however he was the person responsible for notifying the police." The certifying official indicated at Part 3.6 that the known or documented injury to the

petitioner was severe emotional and psychological damages as a result of the robbery, and that the petitioner is undergoing counseling.

The record contains a Union City Police Department Report, dated September 30, 2010, which indicates that the petitioner was a witness to a reported robbery. The Police Report also does not contain any statutory citation for the crime investigated or prosecuted.

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).

On appeal, counsel contends, in part, that the petitioner was the victim of a crime substantially similar to felonious assault. However, while the certifying official stated at Part 3.1 that the petitioner was the victim of "Robbery/Theft," the law enforcement certification does not provide a statutory citation at Part 3.3 as required. The police report also contains no information regarding the section of the California Penal Code relating to the September 30, 2010 incident. Accordingly, it is unclear from the Form I-918 Supplement B which violation of California 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 he was the victim of a crime substantially similar to felonious assault or any other criminal activity specified at section 101(a)(15)(U)(iii) of the Act.¹ Accordingly, the petitioner cannot establish that he 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 he 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

¹ The Form I-918 Supplement B is also deficient because it fails to identify the head of the certifying agency. See 8 C.F.R. § 214.14(a)(2), (3).

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). Consequently, the AAO will not discuss whether the petitioner suffered substantial abuse, as he has not demonstrated that he was the victim of qualifying criminal activity.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act; 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.