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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D14

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 02 2010

IN RE: Petitioner: [Redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(i)

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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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, denied the 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)(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 submit the required law enforcement certification (Form I-918 Supplement B) or establish any of the eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. On appeal, the petitioner submits a statement and indicates on the Form I-290B that a brief or other evidence will be submitted to the AAO within 30 days. We note that the petitioner submitted the Form I-290B on June 21, 2010, and as of this date, we have not received any additional evidence to supplement the record. The record is, therefore, considered complete and ready for adjudication.

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 --

- (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[.]

8 C.F.R. § 214.14(a)(9); section 101(a)(15)(U) of the Act.

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

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).

Pursuant to the regulations, a petitioner must file a Form I-918, Petition for U Nonimmigrant Status, to request U nonimmigrant classification. 8 C.F.R. § 214.14(c)(1). The Form I-918 must be accompanied by certain supporting documentation or “initial evidence,” including:

Form I-918, Supplement B, “U Nonimmigrant Status Certification,” signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

8 C.F.R. § 214.14(c)(2)(i). A “[c]ertifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” 8 C.F.R. § 214.14(a)(2).

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 Posture

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia who entered the United States on June 19, 2002 as a B-2 visitor for pleasure, with authorization to remain until December 18, 2002. The petitioner was listed as a dependent on her parent's Form I-589, Application for Asylum and Withholding of Removal, which was referred to an immigration judge. On July 30, 2007, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on her behalf that was approved on August 12, 2008.

The petitioner filed the instant Form I-918 U petition on October 22, 2009. On February 23, 2010, the director issued a Request for Evidence (RFE) so that the petitioner could submit evidence of her eligibility for U nonimmigrant classification. The petitioner responded to the RFE 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 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.

On appeal, the petitioner cites 8 C.F.R. § 245.24(c),¹ which she states allows her to submit an affidavit describing her efforts to obtain the required law enforcement certification in lieu of the actual certification. The petitioner claims that she went to the police station to have the Form I-918 Supplement B signed, but officials refused to sign it. The petitioner states that, although she is citing a regulation that pertains to the adjustment of status of U nonimmigrants, those individuals seeking initial U nonimmigrant status should also be permitted to submit alternate evidence in lieu of the law enforcement certification because of the barriers they face obtaining evidence from law enforcement officials. Regarding the issue of jurisdiction over the crime of which the petitioner was a victim, the petitioner states that the crimes of which she was a victim can also be prosecuted in the United States. The petitioner cites to 18 U.S.C. § 2340A to support her assertions. Finally, the petitioner states that she has suffered substantial physical and mental abuse as a result of the torture that she suffered. The petitioner's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

Law Enforcement Certification

The petitioner's citation to the language at 8 C.F.R. § 245.24(e)(2) is misplaced, as that section of the regulations relates to individuals who have already been granted U nonimmigrant status and are seeking

¹In his statement, the petitioner quotes the language at 8 C.F.R. § 245.24(e)(2), not the language from 8 C.F.R. § 245.24(c).

to adjust to lawful permanent resident status. The law enforcement certification is a statutory requirement at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), and U.S. Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification. As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, she has not overcome this portion of the director's denial decision.

Victim of Qualifying Criminal Activity

The petitioner has not demonstrated that she was the victim of a qualifying crime or criminal activity. The petitioner claims in her October 12, 2009 statement that her entire family received death threats in Colombia, which forced them to go into hiding. She states that when the threats became worse, she and her family were forced to leave Colombia to save their lives. The petitioner asserts that she has suffered mentally and physically as a result of the threats and that she is still scared.

Although asserting that she and her family were threatened, the petitioner provides no probative details regarding when these threats occurred or the identities of the individuals who made the threats. The lack of substantive information regarding the alleged criminal activity perpetrated against her family does not enable us to find that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act and as defined at section 101(a)(15)(U)(iii) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that she was the victim of a qualifying crime or criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her alleged victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (USCIS) looks at, among other issues, the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1). Other than stating generally that she suffered mentally and physically, the petitioner does not state how the alleged threats impacted her or describe any mental or physical injuries in any probative detail. The record contains no evidence of the petitioner's physical or mental abuse, as that term is defined in the regulation at 8 C.F.R. § 214.14(a)(8), or evidence that addresses the factors relevant to a determination of substantial abuse that are listed in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not met this criterion.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she

has also failed to establish that she possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II).

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As previously discussed, the petitioner did not submit the requisite Form I-918 Supplement B and provided no evidence from a certifying official that a certifying agency was investigating or prosecuting the alleged crimes. On appeal, the petitioner does not specifically address this portion of the director's decision. As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting the qualifying criminal activity, as required by 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Qualifying Criminal Activity in Violation of U.S. Laws

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that the qualifying criminal activity violated the laws of the United States or occurred in the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

The petitioner claims on appeal that pursuant to 18 U.S.C. § 2340A, federal courts have jurisdiction over the alleged criminal activity perpetrated against her in Colombia. 18 U.S.C. § 2340A states, in pertinent part:

- (a) Offense.— Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.
- (b) Jurisdiction.— There is jurisdiction over the activity prohibited in subsection (a) if—
 - (1) the alleged offender is a national of the United States; or
 - (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

The petitioner has not shown how the United States would have jurisdiction over the alleged crimes pursuant to 18 U.S.C. § 2340A. The petitioner has never named her alleged offender(s) and, therefore, cannot establish that such person(s) is a national of or present in the United States. While torture is named as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the petitioner has not cited any particular U.S. federal law that provides for extraterritorial jurisdiction to prosecute the alleged crime, as required by the regulation at 8 C.F.R. § 214.14(b)(4).

Conclusion

The petitioner did not submit the certification required by section 214(p)(1) of the Act. The petitioner also has not demonstrated that she was a victim of qualifying criminal activity and he has not met any of the eligibility requirements at section 101(a)(15)(U)(i)(I)-(IV) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As in all visa petition proceedings, the petitioner bears the burden of proving his 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.