

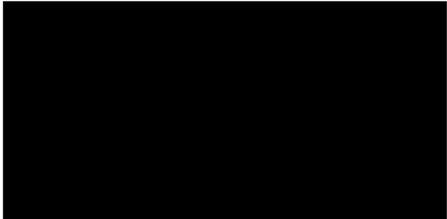
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



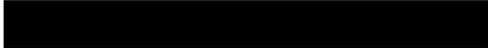
U.S. Citizenship  
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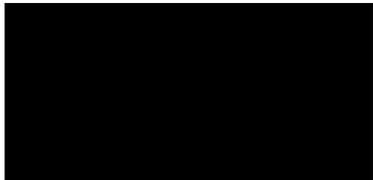
FILE:  Office: VERMONT SERVICE CENTER Date:

DEC 13 2013

IN RE: Petitioner: 

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:

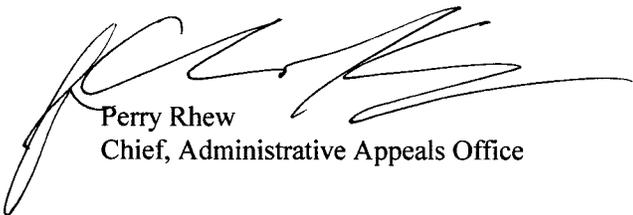


INSTRUCTIONS:

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 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 denied the petition because the petitioner did not establish that: (1) she had been the victim of a qualifying crime or criminal activity; (2) she suffered substantial physical or mental abuse resulting from such victimization; and (3) she was admissible to the United States. On appeal, counsel submits a brief, and a copy of an unpublished district court case.

*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[.]

The term “any similar activity” is defined as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Honduras who claims to have initially entered the United States on or about August 1992. On December 9, 1996, the petitioner was given voluntary departure until June 9, 1997 by an immigration judge, with an alternate order of removal to Honduras. The petitioner claims to have complied with the voluntary departure order by returning to Honduras on June 7, 1997. She claims to have reentered the United States on or about October 2002 without inspection. The petitioner was served with a Notice to Appear for removal proceedings on May 3, 2007. The petitioner’s next hearing before the Immigration Court in Newark, New Jersey is scheduled for December 22, 2010.

The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on July 7, 2008, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On August 19, 2009, the director issued a request for further evidence (RFE). Counsel for the petitioner requested an additional 20 days to respond; however, pursuant to the regulation at 8 C.F.R. § 103.2(b)(8)(iv), the director did not provide any additional response time. Accordingly, the director denied the Form I-918 U petition and the petitioner timely appealed. As we shall discuss below, we concur with the director that the petitioner has not established her eligibility for U nonimmigrant status.

#### *The Crime or Criminal Activity of which the Petitioner was a Victim*

The Form I-918 Supplement B that the petitioner submitted in support of her petition is signed by Erin K. Callahan, Deputy Attorney General, in the State of New Jersey. The Form I-918 Supplement B at Part 3, Item 1 identifies the criminal activity of which the petitioner was a victim as section 2C:21-2.1(a) of the New Jersey Statutes (N.J.S.), which provides that:

A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license, birth certificate or other

document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

N.J. Stat. Ann. § 2C:21-2.1(a) (West 2010).

At Part 3, Item 1 of the Form I-918 Supplement B, the criminal activity of which the petitioner was a victim is indicated as “blackmail” and “obstruction of justice.”

Part 3, Item 5 of the Form I-918 Supplement B describes the criminal activity being investigated and the petitioner’s involvement as follows:

The petitioner provided credible and reliable information in connection with the continuing investigation by the New Jersey State Police and the Division of Motor Vehicles targeting document fraud and identity theft. . . .

At Item 6 of Part 3 of the Form I-918 Supplement B, the certifying agency lists the known injuries to the petitioner as:

Victim suffered an impairment of her emotional soundness as a result of the blackmailing and threats which occurred when [the] perpetrators feared the Victim would report their crimes to the authorities. Upon information and belief, the perpetrators, aware of victim’s immigration status, called Immigration and Customs Enforcement (ICE) in order to detain victim and refrain her from reporting their criminal activities to the authorities. It is highly likely that the victim is also a casualty of identity [th]eft and refrain [sic] her from reporting their criminal activities to the authorities. It is highly likely that the victim is also a casualty of identify theft as her passport and social security were not returned to her and may still be in the possession of the perpetrators.

According to the petitioner’s affidavit, when she needed to renew her driver’s license, she turned to her roommate’s friend, G-V-<sup>1</sup>, who said that there was a new law under which she could renew her license. G-V- asked for the petitioner’s social security card, expired driver’s license, passport, and expired employment authorization document, as well as a \$1,000 fee, all of which she gave to him. The petitioner indicated that she became suspicious of G-V- and asked for the documents she had given him as well as the \$1,000 fee; however, G-V- refused to return her documents. The petitioner indicated that G-V- and his associate told her that the “big boss” said that she should stop harassing them for her documents or else they were going to “call immigration.” The petitioner stated that she did not stop asking G-V- for her documents until she was told that she would regret bothering them. The petitioner stated that she was arrested and detained by ICE agents and believes that G-V- made good on his threats to call immigration if she did not stop bothering them for the return of her documents.

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<sup>1</sup> Name withheld to protect identity.

The director determined that section 2C:21-2.1(a) of the N.J.S. is not similar to blackmail, obstruction of justice, or any other qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. The director further determined that the petitioner had not demonstrated that she suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity.

On appeal, counsel asserts that the petitioner has been the victim of blackmail and obstruction of justice. According to counsel, G-V- used the petitioner's lack of lawful immigration status to blackmail and coerce her into not reporting his illegal activities. Counsel cites an unpublished district court decision in support of her claim that the petitioner was the victim of qualifying criminal activity.

The record does not establish that the petitioner was the victim of blackmail or obstruction of justice. There is only one statutory citation listed on the Form I-918 Supplement B as the crime that was investigated or prosecuted, which is section 2C:21-2.1(a) of the N.J.S. That section relates to the sale of false government-issued identification documents. "Document fraud and identity theft" are the only other crimes listed on the Supplement B as investigated or prosecuted by the certifying agency.

The Supplement B states that the petitioner was the victim of the qualifying crimes of blackmail and obstruction of justice at Part 3, Item 1. Deputy [REDACTED] also indicated that the petitioner was blackmailed and detained by ICE purportedly due to a "tip" provided by G-V-. According to 8 C.F.R. § 214.14(a)(5), the term "investigation or prosecution" refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity. Deputy [REDACTED] does not clarify on the Form I-918 Supplement B whether her office, the New Jersey State Police, or any other law enforcement entity discovered or otherwise investigated the allegations of blackmail or obstruction of justice made by the petitioner.

On appeal, counsel asserts that the petitioner was the victim of blackmail in the form of criminal coercion, an offense under N.J.S. § 2C:13-5(a). The record lacks any evidence, however, that the certifying agency in this case investigated or prosecuted that offense. Counsel also fails to demonstrate that the nature and elements of the certified crime in this case – sale of false government-issued identity documents under N.J.S. § 2C:21-2.1(a) – are substantially similar to any federal or state law offense of blackmail, obstruction of justice or any other qualifying crime.

The unpublished district court case cited by counsel on appeal is neither binding nor persuasive. The question presented in that case was whether the court could act as a certifying official for a Form I-918 Supplement B, which is not at issue here. *Garcia v. Audubon Communities*, No. 08-1291, 2008 WL 1774584 (E.D. La. Apr. 15, 2008). Even if the case were on point, it would not bind our decision in the present matter. In contrast to the precedential authority of the case law of a United States circuit court of appeals, the AAO is not bound to follow the decisions of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The case is also not persuasive. The qualifying criminal activity considered in that case was related to involuntary servitude, not

blackmail or obstruction of justice, the qualifying crimes allegedly perpetrated against the petitioner in the present matter. *Garcia v. Audubon Communities*, 2008 WL 1774584 at \*2-3.

The present record fails to establish by a preponderance of the relevant evidence that the petitioner was the victim of blackmail, obstruction of justice, or any other qualifying crime or criminal activity enumerated 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 such victimization. Even if the petitioner had established that she was the victim of qualifying criminal activity, she has not established that her resultant harm constituted substantial physical or mental abuse.

The petitioner does not claim that she suffered physical abuse and the record does not include any evidence that the petitioner suffered injury or harm to her physical person. The record also does not establish that the petitioner sustained substantial mental abuse. Factors to consider when making this determination include the nature of the injury inflicted or suffered, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm, and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. No single factor is a prerequisite to establish that the abuse suffered was substantial and the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. 8 C.F.R. § 214.14(b)(1).

On the Form I-918 Supplement B, Deputy Callahan states that the petitioner "suffered an impairment of her emotional soundness" as a result of being blackmailed and threatened by G-V-; however, Deputy [REDACTED] does explain how the petitioner's impaired emotional state manifested itself for her to make such an observation. Without more detail, Deputy Callahan's statement is not probative in demonstrating that the petitioner suffered substantial mental abuse.

In her June 11, 2008 affidavit, the petitioner stated that she suffered substantial mental abuse because she "was detained by Immigration after [G-V-] and his crew called ICE to come to [her] home." She stated that she lost her sense of security, was evicted from her apartment, and lost a significant amount of money. She also stated that she was afraid that G-V-'s gang would hurt her children and that she is no longer the same person. She also stated that she lives in fear that G-V- will come to her home to hurt her. The petitioner reported that she feels detached, has trouble concentrating, is jumpy, startles easily, and has disturbing memories of her exchanges with G-V- and being detained by ICE. She indicated that she forgets special occasions and that her family, friends and coworkers have noticed a change in her attitude. The petitioner indicated that she was seeing a psychologist, [REDACTED] to help her deal with the stress and mental anguish she has been experiencing.

The petitioner also submitted a June 4, 2008 psychological report from [REDACTED] licensed clinical

social worker. [REDACTED] diagnosed the petitioner with Post Traumatic Stress Disorder (PTSD), "precipitated by a series of events that led to her arrest and detention" by ICE. [REDACTED] stated that the petitioner is experiencing severe and persistent symptoms of PTSD. [REDACTED] identified the traumatic psychological event as the petitioner's arrest and detention by ICE, which included psychological, emotional and sexual abuse by her cellmate.

When denying the petition, the director noted Ms. [REDACTED] statements that the traumatic triggering event was the petitioner's arrest and detention by ICE and that, while it seemed reasonable that the events would cause stress, there was no evidence that the petitioner has suffered substantial physical or mental abuse as a result of a qualifying crime. On appeal, counsel states that the blackmail perpetrated by G-V- has caused the petitioner to suffer mental abuse which has required medical care. According to counsel, the petitioner is under the care of a psychiatrist, Dr. [REDACTED] and "continues to treat with [REDACTED] LSW, as well." Counsel states that Dr. [REDACTED] has diagnosed the petitioner with "major depression disorder" and she is under medication.

The record does not include any letters or reports from Dr. [REDACTED] regarding their treatment and diagnoses of the petitioner. The only medical documentation in the record is from [REDACTED] who attributes the petitioner's PTSD primarily to the petitioner's detention after her arrest by ICE, and not to the events with G-V that were investigated by the certifying agency. In her own affidavit, the petitioner states that she feels detached, has trouble concentrating, is jumpy, startles easily, and has disturbing memories due to her interactions with G-V- and her detention by ICE. While we do not minimize the petitioner's experiences, the relevant evidence does not demonstrate that the petitioner suffered permanent or serious harm to her appearance, health, physical, or mental soundness, as a result of the crime that the certifying agency investigated; or that the harm she suffered constituted substantial abuse under any of the other factors and the standard prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not established that she suffered substantial physical or mental abuse as a result of having been the victim of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I).

### *Conclusion*

The petitioner has not established that she was a victim of a qualifying crime or criminal activity specified at section 101(a)(15)(U)(iii) of the Act or that, even if she had been a victim of a qualifying crime or criminal activity, she suffered substantial physical or mental abuse as a result. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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