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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 0 9 2010
EAC 08 117 50064

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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) 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: (1) she has been the victim of qualifying criminal activity; (2) she has suffered substantial physical and mental abuse as a result of having been the victim of qualifying criminal activity; (3) she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity upon which her petition is based; (4) she has been, is being, or is likely to be helpful to United States (U.S.) law enforcement authorities investigating or prosecuting qualifying criminal activity; and (5) the qualifying criminal activity violated the laws of the United States or occurred in the United States. The director also noted throughout his decision that the petitioner did not submit the requisite law enforcement certification.

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 September 29, 2009, 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.[1]

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);
>
> (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

[1]The regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Vermont Service Center or any other federal office.

territories and possessions of the United States;

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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; 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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other 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).

* * *

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

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."

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

(2) *Certifying 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. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) 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
(ii) A Federal, State, or local judge.

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(5) *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.

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(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(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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(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.

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: 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, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 Haiti who states on the Form I-918 that she entered the United States on January 13, 1999.[2] The petitioner subsequently filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to immigration court. In an October 27, 2000 order, an immigration judge denied the petitioner's applications for asylum and withholding of removal, and ordered her removed to Haiti. On January 14, 2003, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal.

The petitioner filed the instant Form I-918 on March 14, 2008. On September 10, 2008, the director issued a Notice of Intent to Deny (NOID) the petition for failure to submit the requisite law enforcement certification, failure to demonstrate that the petitioner had suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity and that the qualifying

[2] The applicant stated on her Form I-589 that she entered the United States on January 13, 1999 as a B-2 visitor for pleasure. A review of the petitioner's passport copy, however, does not show a U.S. immigration stamp for that particular date. The passport contains stamps dated June 26, 1998; August 19, 1997; and February 21, 1997 only.

criminal activity violated a U.S. federal law that provides for extraterritorial jurisdiction. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's concurrently filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed.

On appeal, the petitioner cites 8 C.F.R. § 245.24(c),[3] 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 department 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 she submitted a copy of a civil law suit against [redacted] to show that, although [redacted] criminal activity took place outside of the United States he was, nevertheless, put on trial within the United States. The petitioner, therefore, claims that the crime 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 in Haiti. 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 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). The regulation further prescribes that a Form I-918 petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

Rather than submitting the certification required by statute and regulation, the petitioner submitted a "U

[3]In her 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).

Visa Certification Form" completed by , who identifies himself as "Other Investigating Authority," and who is a notary public. This form does not meet any of the requirements prescribed by the regulation at 8 C.F.R. § 214.14(c)(2)(1). The record does not establish that is a certifying official, as that term is defined in the regulation at 8 C.F.R. § 214.14(a)(2) and (3). asserts that the petitioner was blackmailed, tortured, threatened with death, and assaulted in Haiti, but the record does not establish that the alleged offenses were qualifying crimes or criminal activity, as that term is defined in the regulation at 8 C.F.R. § 214.14(a)(9). The record also does not show that any authority is investigating or prosecuting the criminal activity or that the petitioner has been, is being or is likely to be helpful to any such investigation or prosecution. The form also does not show that the crimes violated U.S. federal law that provides for extraterritorial jurisdiction. Accordingly, the petitioner failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1).

Victim of Qualifying Criminal Activity

The petitioner has not demonstrated that she was a victim of a qualifying crime or criminal activity. The petitioner provided two statements in support of her petition – one dated March 5, 2008; one dated September 29, 2008. In both statements, the petitioner claimed that she became politically active in 1990 in support of Aristide. She claimed that, starting in 1991, groups of men came to her home where they were yelling and trying to break down the gate to her home. The petitioner stated that she and her family went into hiding but returned home sometime later when in February 1992, men again came to threaten her and break down the gate to her home. In the petitioner's March 2008 statement, the last instance of contact with the unidentified men that the petitioner described occurred in October 1997 when she and her family were threatened over the phone. In the petitioner's September 2008 statement, however, the petitioner listed an instance of a threat that occurred in July 1998. There is no explanation in the record regarding why the petitioner did not list the July 1998 threat in her March 2008 statement. Furthermore, neither statement contains explanations regarding how the petitioner could live in hiding yet travel to the United States and return to Haiti on three different occasions when her life was allegedly being threatened. The petitioner's inconsistent statements and the lack of probative details regarding her trips to the United States fail to establish that she was the victim of a qualifying crime or criminal activity.

Additionally, on the Form I-918 Supplement B, the petitioner stated that she was the victim of blackmail, false imprisonment and torture. , the notary public, attested that the petitioner was also the victim of felonious assault. In neither statement did the petitioner claim that she was ever harmed and did not describe any incidents against her that could be interpreted as being related to blackmail, torture, imprisonment or assault. These inconsistencies also undermine the petitioner's credibility and do not support a conclusion that the petitioner was a victim of qualifying criminal activity.

The affidavits of the petitioner's three friends also fail to establish the petitioner's claim. Each affiant refers to "threats" that the petitioner allegedly received, but none of them cite to a specific incident that

the petitioner allegedly experienced.[4] Not one individual expresses personal knowledge of the alleged crimes and does not describe the criminal activity in any probative detail.

Accordingly, the petitioner has not established 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 and the regulation at 8 C.F.R. § 214.14(a)(9), (14).

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). 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 U Nonimmigrant Status Certification 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

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[4] One affiant uses the word "his" when referring to the petitioner, who is female.

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.
In support of her claim that the alleged crimes against her are qualifying criminal activities in violation of U.S. laws, the petitioner cited to the "Alien Torture Statute,"[5] 28 U.S.C § 1350, Pub. L. No. 102-256, and a summons in the Southern District of New York that was served on Emmanuel Constant. The Alien Tort Statute gives U.S. federal district courts jurisdiction over civil actions by aliens for torts "committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350 (2009). The law is not criminal, but civil, and governs damages for torts, not culpability, prosecution or sentencing for crimes.

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. 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 perpetrated against her in Haiti pursuant to 18 U.S.C. § 2340A. The petitioner has never named her alleged offenders and, therefore, cannot establish that they are nationals 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 she has not met any of the eligibility requirements at section 101(a)(15)(U)(i) 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.

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[5] The statutory provision is entitled "Alien's action for tort" and is commonly known as the Alien Tort Statute, not the "Alien Torture Statute," as cited by the petitioner. 28 U.S.C. § 1350 (2009).

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.