

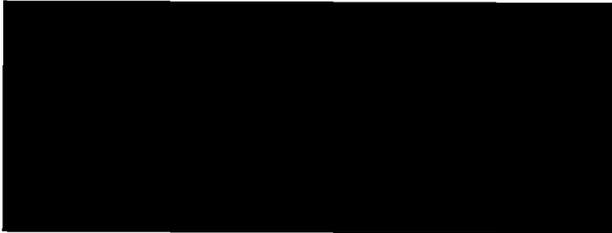
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship and Immigration Services**



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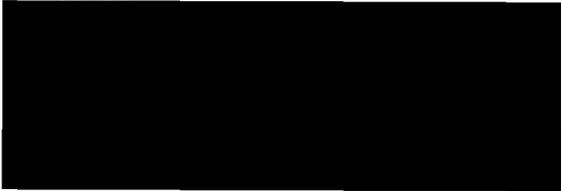
FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

NOV 18 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:



**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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 decision of the director will be affirmed in part and withdrawn in part. 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 she had been the victim of a qualifying crime or criminal activity and she, therefore, could not meet the eligibility criteria at section 101(a)(15)(U) of the Act. On appeal, counsel submits a brief, copies of Arizona Revised Statutes sections 13-1601 and 13-1602, a copy of an *Arizona Traffic Ticket and Complaint*, a copy of the petitioner's father's Arizona Department of Corrections identity card, and information from the Department of Justice's website on domestic violence.

*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[.]

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

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], 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 definition:

(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;

*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 Guatemala, who was born on November 27, 1981. She entered the United States without inspection on or about January 7, 1997. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on November 10, 2008, along with Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On February 24, 2010, the director issued a request for further evidence (RFE) that would demonstrate that the petitioner was the victim of a qualifying crime. Counsel for 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 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.

The Form I-918 Supplement B is signed by [REDACTED] and is dated October 15, 2008. The Form I-918 Supplement B at Part 3, Item 1 identifies the criminal activity of which the applicant was a victim as domestic violence. Part 3 identifies the statutory citation(s) for the criminal activity being investigated or prosecuted as section 13-1602 of the Arizona Revised Statutes and the dates on which the criminal activity occurred as September 11, 1999 and June 21, 2001. Part 3, Item 5 describes the criminal activity being prosecuted and the petitioner's involvement as follows:

In 1999 the victim's vehicle was damaged by her father when she refused to let him drive it because he was intoxicated. Damage was estimated under \$500. In 2001 the victim witnessed her father push her mother during a fight that occurred after he rammed the house with another vehicle.

At Item 6 of Part 3, the certifying agency lists the known injuries as: "no physical injuries."

The certifying agency notes in Part 4 of the Form I-918 Supplement B that the petitioner possesses information concerning the criminal activity listed in Part 3 and has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity. In Part 4, Item 5, a section of "other" comments regarding the helpfulness of the victim, the certifying agency indicates that this section is not applicable.

The record also includes a police report of an incident that occurred on September 11, 1999, and was reported by the petitioner's mother. In the narrative of the police report, the officer indicated that he was dispatched to a family fight when the victim called and reported that her husband was intoxicated and was ramming their house with a vehicle. The officer indicated that the suspect, the petitioner's father, was arrested and that the petitioner's mother told the police that she had argued with her husband because she did not want to give him the car keys because he was drunk but that he had taken the keys from her and run the truck into the house twice. The police report identifies the charges against the perpetrator as 13-3601/1604, aggravated criminal damage and domestic violence and 13-3601/2904, disorderly conduct and domestic violence.

The record includes a second police report involving an incident that occurred March 9, 2000, which was reported by the petitioner's brother. The officer on scene reported that the petitioner's brother called police and reported that he was afraid to return home because his father had assaulted him. The officer indicated that the petitioner's brother informed him that he and his father argued over money and when the petitioner's brother tried to leave, his father threw beer bottles at his truck. The officer reported that he proceeded to the house and arrested the petitioner's father. The police report identifies the charges against the perpetrator as 13-3601/1203, domestic violence and assault and 13-3613, contributing to the delinquency of a minor.

The record also includes a police report of an incident between the petitioner's mother and father that occurred February 6, 1995, a date prior to the petitioner's entry into the United States. The record further includes several other police reports that do not relate to the petitioner, her mother, brother, or father. The petitioner also submitted a letter, dated March 25, 1997, from the City of Tucson Police Department, which stated that the petitioner's father was found guilty of disorderly conduct under section 13-2904 of the Arizona Revised Statutes and domestic violence and was sentenced to pay a \$500 fine, which was suspended upon completion of six months of monitored probation.

In the petitioner's March 6, 2008 affidavit, she described her life in Guatemala, her entry into the United States, and the violence her father inflicted upon her mother and their family, both in the United States and in Guatemala. The petitioner indicated that her father is an alcoholic and that she witnessed her father abusing her mother on numerous occasions. The petitioner described two incidents in particular: one when she witnessed her father beat her mother, as well as her brother when he tried to intervene; and the second when she witnessed her father beat, choke and rape her mother. The petitioner did not, however, provide information relating to any of the incidents mentioned in the police reports. She indicated that at some point in time, after her father had violated a restraining order, he was arrested and scheduled to appear in court but he fled and that she does not know his whereabouts.

The record also included a May 12, 2008 psychological report prepared by [REDACTED] based on two interviews with the petitioner on March 5, 2008 and March 6, 2008. [REDACTED] provided the petitioner's description of her life in Guatemala and referred to incidents of violence the petitioner witnessed between her mother and father, both in Guatemala and in the United States. [REDACTED] indicated that the petitioner spoke specifically of an incident when her mother was beaten quite badly but the report does not provide a date for the incident. [REDACTED] also noted that the petitioner described an incident when she borrowed her mother's car and "[h]er father came to her house, drunk and demanding the keys and calling her 'the worst names' for not answering the door." The petitioner indicated that she went outside and saw a chair on the car and a broken window and her father walking down the street. The petitioner told [REDACTED] that she called her brother who called the police and when the police came they arrested her father and took him to jail. [REDACTED] does not provide a date for this incident. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder (PTSD) related to her own abuse as a child by her grandfather and uncle and to her witnessing her father's abuse of her mother.

The director determined that the petitioner is not the victim of a qualifying crime. The director noted that although the certifying agency identified the petitioner as a victim of criminal activity involving or similar to domestic violence, the certifying agency provided only a criminal citation for the criminal activity being investigated or prosecuted as Arizona Revised Statutes 13-1602, which relates to criminal damage. The director concluded, therefore, that the petitioner was not the victim of a qualifying crime or criminal activity and denied the petition on this basis. The director noted that as the petitioner was not the victim of a qualifying crime, she could not establish any of the eligibility criteria stated at section 101(a)(15)(U)(i) of the Act.

On appeal, counsel for the petitioner asserts that the director erred when determining that criminal damage in the State of Arizona is not a crime involving domestic violence. Counsel contends that Arizona Revised Statutes at 13-3601 defines domestic violence as any offense defined in section 13-1602, among other sections, if any of the following apply: (1) the relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household; or (2) the victim is related to the defendant by blood as a child. Counsel contends that the certifying officer had evidence that the petitioner was a victim and checked the box at Part 3, Item 1 indicating that she was a victim of domestic violence.

#### *Victim of Qualifying Criminal Activity*

The statutory citation listed on the Form I-918 Supplement B as the crime that was investigated or prosecuted is Arizona Revised Statutes 13-1602, which relates to criminal damage. On appeal, counsel submits a copy of an *Arizona Traffic Ticket and Complaint*, dated September 12, 1999, which states that on September 11, 1999 the petitioner's father violated sections 13-3601/13-1602 (domestic violence/criminal damage) and sections 13-3601/13-2904 (domestic violence/ disorderly conduct). This *Complaint* evidences that the police investigated the petitioner's father for a crime of domestic

violence, which is a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.<sup>1</sup> We, therefore, withdraw the director's finding that a qualifying crime or criminal activity did not occur.

We do, however, concur with the director that the petitioner has not demonstrated that she was a victim of the qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. At the outset, we note that the certifying official's statement on the Form I-918 Supplement B does not correlate with the September 11, 1999 police report of the incident that the petitioner submitted for the record. According to the police report, the officer on the scene identified the petitioner's mother as both the victim and the person who reported the incident of the petitioner's father being drunk and ramming the car into the house. In addition, the report indicates that the car taken by the petitioner's father was registered to the petitioner's mother, and was not the petitioner's car as indicated on the Form I-918 Supplement B. The petitioner's name is listed on the police report only as a witness. Nothing in the accompanying police report indicates that the petitioner was directly or proximately harmed by the qualifying criminal activity.

In addition, the petitioner's testimony fails to demonstrate that she was a victim of her father's criminal activity for which he was arrested on September 11, 1999. We note that the petitioner's March 6, 2008 declaration does not mention either the September 11, 1999 or June 21, 2001 incidents listed on the Form I-918 Supplement B. According to [REDACTED] report, the petitioner described an incident when she borrowed her mother's car and "[h]er father came to her house, drunk and demanding the keys and calling her 'the worst names' for not answering the door." The petitioner indicated that she went outside and saw a chair on the car and a broken window and her father walking down the street. The petitioner told [REDACTED] that she called her brother who called the police. While the petitioner claims to have been the subject of name calling by her father, and the police report indicates that there was a "family fight," she has not established that she was directly or proximately harmed during the September 11, 1999 incident.

The certifying official also identified an incident occurring on June 21, 2001 in which, according to the certifying official, the petitioner was a witness to her mother being pushed by her father after her father rammed the house with another vehicle. The record does not contain a police report or other evidence regarding this incident showing that the petitioner was directly or proximately harmed at the time.

Based upon the evidence in the record, while the petitioner's father was the perpetrator of qualifying criminal activity on September 11, 1999, the petitioner has not established that she was the victim of that activity. She, therefore, does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14).

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<sup>1</sup> We note that the *Complaint* was entered into the record for the first time on appeal, despite the director's February 24, 2010 RFE requesting any and all evidence to demonstrate that the crime listed on the Form I-918 Supplement B could be considered a qualifying crime.

*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. 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 as a result of the two incidents investigated or prosecuted by the certifying agency. The AAO has also reviewed the record to determine whether 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).

In her May 12, 2008 psychological report, [REDACTED] states that the petitioner's PTSD is related to her own physical and sexual abuse by her grandfather and uncle as well as to her witnessing her father abuse her mother, but [REDACTED] does not discuss any specific symptoms the petitioner suffered related to the two incidents that were investigated or prosecuted by the certifying agency. In her own declaration, the petitioner failed to provide a detailed probative statement regarding any physical or mental harm that she suffered as a result of either incident. Accordingly, the record does not indicate that the petitioner suffered permanent or serious harm to her appearance, health, physical, or mental soundness, as a result of the two incidents that the certifying agency investigated or prosecuted. 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 demonstrated that a qualifying crime occurred on September 11, 1999; that she possessed information regarding that crime; that she was helpful to the law enforcement agency investigating or prosecuting that crime; and that the crime occurred in the United States. However, the petitioner has not established that she was a victim of that specific qualifying criminal activity and that she suffered substantial abuse as the result of her victimization from that specific activity. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act.

Nothing in this decision should be read to indicate an indifference to or downplaying of the significance of the petitioner's exposure to domestic violence situations. The AAO understands the difficulties encountered by victims of domestic violence and the lasting impact such exposure may have on an individual. In these proceedings, however, the burden of proving eligibility for the benefit sought



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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 legal burden has not been met. Accordingly, the appeal will be dismissed.

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