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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



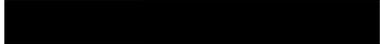
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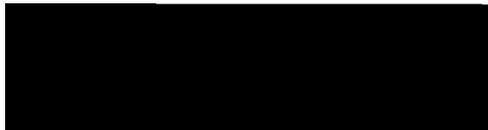


FILE:  Office: VERMONT SERVICE CENTER Date: NOV 18 2010

IN RE: Petitioner: 

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)

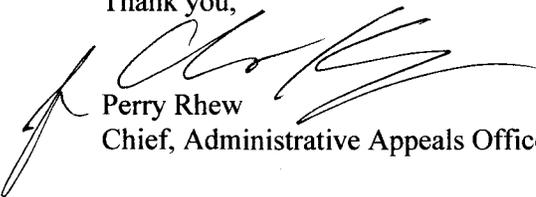
ON BEHALF OF PETITIONER:



**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 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 determined that the petitioner did not establish that she was a victim of a qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner contends through counsel that she is eligible for U nonimmigrant classification because she suffered substantial mental abuse as a victim of the qualifying criminal offenses of witness tampering and obstruction of justice.

*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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Further, the regulations state that a petitioner may be considered a victim of witness tampering or obstruction of justice if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

8 C.F.R. § 214.14(a)(14)(ii).

The term “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8). Further,

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[.]

8 C.F.R. § 214.14(b)(1).

Under section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), 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 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 a “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.” 8 C.F.R. § 214.14(c)(2)(i). The Form I-918 Supplement B 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.

*Id.*

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 reflects that the petitioner is a native and citizen of Mexico who entered the United States in or around December 2004, using her B1/B2 visa and border crossing card. In 2006, the petitioner was a

victim of forgery in violation of Texas law. *See Form I-918 Supplement B*, dated Aug. 22, 2008; *San Juan Police Department Report*, dated Jan. 17, 2007; *Declaration of Maria Celia Marquez*, dated Feb. 6, 2009. According to the law enforcement certification, the petitioner “was swindled out of monies from a male subject who claimed to be part of an established record company.” *Form I-918 Supplement B*. Although the petitioner was threatened and followed by the suspect, she “provided a wealth of information against the suspect and cooperated with the police even though she was fearful due to threats made against her.” *Id.*; *see also Declaration of Maria Celia Marquez*, dated Feb. 6, 2009 (describing verbal threats to harm the petitioner and her children and series of threatening car chases); *Police Report* (describing verbal threat). The petitioner and her family report continuing fear and trauma as a result of the threats. *See Mental Health Evaluation*, conducted Feb. 23, 2010; *Declarations of Maria Celia Marquez*, dated Feb. 6, 2009 and Mar. 23, 2010; *Letter from Cesar Amed Marquez*, dated Mar. 23, 2010; *Letter from Celina Marquez*, undated; *Letter from Celia Marquez*, dated Mar. 23, 2010.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on February 18, 2009. On January 4, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of her claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director denied the petition, and the petitioner filed a timely appeal.

### *Analysis*

Here, the petitioner’s law enforcement certification indicates that the petitioner was a victim of criminal activity involving witness tampering and obstruction of justice, offenses which are listed in the statute as qualifying crimes. *See* section 101(a)(15)(U)(iii) of the Act; Form I-918 Supplement B, Part 3.1. Additionally, the record reflects that the petitioner was directly and proximately harmed by the perpetrator of the witness tampering and obstruction of justice. *See, e.g., Mental Health Evaluation*. Further, the evidence provides reasonable grounds to conclude that the perpetrator committed the witness tampering and obstruction of justice as a means to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity. *See Police Report* (recording the suspect’s threat that the petitioner could be hurt if he was arrested); *Declarations of Maria Celia Marquez* (describing threats to harm the petitioner and her family if she cooperated with the police).

However, the petitioner must also establish that the certifying agency is or was investigating or prosecuting the qualifying criminal activity of which she is a victim. *See* Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Here, the evidence shows that the certifying agency investigated the crime of forgery, but the record does not show that the certifying agency investigated or prosecuted the crimes of witness tampering or obstruction of justice. Specifically, Part 3.3 of Form I-918 Supplement B indicates that only the crime of forgery was investigated or prosecuted. The certifying official’s comments on the Form I-918 Supplement B and the police report also do not indicate that the San Juan Police Department ever investigated or

prosecuted the perpetrator of the forgery for witness tampering or obstruction of justice. Accordingly, the petitioner failed to establish that she was a victim of a qualifying criminal activity that was investigated or prosecuted by a certifying agency, as required by section 101(a)(15)(U)(i)(III) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

*Conclusion*

Although the evidence shows that the petitioner assisted law enforcement in the investigation of forgery, and that she suffered substantial mental abuse as a result of her victimization, she cannot meet the eligibility criteria for U nonimmigrant classification without certification that the qualifying crimes were investigated or prosecuted.

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, the petitioner has not met her burden of showing eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i)(I) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.