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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: OCT 04 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) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

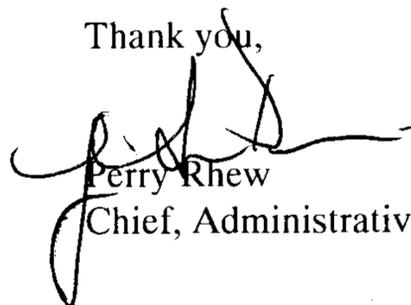
SELF-REPRESENTED

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 \$585. 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) 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 he had been the victim of a qualifying crime or criminal activity; that he had suffered substantial physical or mental abuse based on qualifying criminal activity; and, that consequently he could not establish any of the statutory eligibility requirements which all include that the crime is a qualifying crime or criminal activity.

On appeal, the petitioner submits a statement and indicates on the Form I-290B, Notice of Appeal or Motion, 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 December 22, 2009 and as of this date we have not received any additional evidence to supplement the record. The record is therefore considered complete.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 --
 - (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

¹ The regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to the 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.

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:

(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 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 [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 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.

(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.

(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.

(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 regulation at 8 C.F.R. § 214.14(b) provides the criteria for determining eligibility for U-1 nonimmigrant status. 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 History

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Haiti who entered the United States at or near Miami, Florida without inspection on or about December 29, 2001. The petitioner subsequently filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the immigration court. On May 6, 2004, the immigration judge denied the petitioner's Form I-589 application and ordered the petitioner removed from the United States. On June 23, 2005, the Board of Immigration Appeals affirmed the immigration judge's order.

The petitioner filed the instant Form I-918 on April 28, 2008. On September 18, 2009, the director issued a Notice of Intent to Deny (NOID) the petition indicating that the evidence in the record did not include sufficient evidence 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 criminal activity violated a U.S. federal law that provides for extraterritorial jurisdiction. The petitioner provided a response to the director's NOID, 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),² which he states allows him to submit an affidavit describing his efforts to obtain the required law enforcement certification in lieu of the actual certification. The petitioner claims that he went to the Miami-Dade Police Department to have the Form I-918 Supplement B signed, but officials refused to sign it. The petitioner states that, although he 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. The petitioner cites to 18 U.S.C. § 2340A to support his assertion that although the alleged crimes occurred outside the United States, the United States has jurisdiction. Finally, the petitioner states that he has suffered substantial physical and mental abuse as a result of the torture that he suffered in Haiti. Upon review, 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 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 AAO is without authority to alter the requirements set out by Congress. The regulation at 8 C.F.R. § 214.14(c)(2)(i) prescribes that a Form I-918 petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification and that 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.* Accordingly, the petitioner failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) and thus the petition must be denied.

² In 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).

Victim of Qualifying Activity

The petitioner has not demonstrated that he was a victim of a qualifying crime or criminal activity. The petitioner claimed in his April 19, 2008 statement that his uncle was beaten to death by two Haitian police officers over an agricultural dispute. The petitioner indicated that when he questioned the police about his uncle, he was arrested but was able to run away and hide for eight months. The petitioner stated that after a powerful member of "Convergence" intervened on his behalf, he returned to his farm on December 17, 2001; however some police officers came to arrest him and to accuse him of participating in a coup d'etat. The petitioner indicated that his wife told him not to stay so he went into hiding until he was able to leave Haiti. On the Form I-918 Supplement B, the petitioner lists the crimes of which he was a victim as blackmail, false imprisonment, torture, and threats to his life. The petitioner does not, however, indicate in probative detail in his statement how he was blackmailed and how he was the victim of false imprisonment and torture. The petitioner's statement is general, does not provide a chronological timeline of events, and does not provide a detailed description of the circumstances of these alleged events. The petitioner has failed to provide probative evidence establishing that the criminal activity set out in his statement actually occurred. The AAO also points out that the "U" nonimmigrant visa classification is not a substitute for and cannot be used to obtain political asylum from claimed persecution in the petitioner's native country.

The brief statements of the petitioner's three friends also fail to establish the petitioner's claim. Each friend's affidavit is very brief and contains scant information on the petitioner's claims of victimization. No individual expresses personal knowledge of the alleged crimes and no individual describes the claimed criminal activity in any probative detail.

Accordingly, the petitioner has not established that he 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) and (14).

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been victim of qualifying criminal activity. Accordingly, the petitioner has not as established the requirement of section 101(a)(15)(U)(i)(I) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I).

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he 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 Law Enforcement

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 he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he 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 authority 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 he was the victim of a qualifying crime or criminal activity, he 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 his claim that the alleged crimes against him are qualifying criminal activities in violation of U.S. laws, the petitioner cited to the "Alien Tort Statute,"³ 28 U.S.C. § 1350, Pub. L. No. 102-256. 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 also claims on appeal that pursuant to 18 U.S.C. § 2340A, federal courts have jurisdiction over the alleged criminal activity perpetrated against him. 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

³ The statutory provision is entitled "Aliens action for tort" and is commonly known as the Alien Tort Statute, not the "Alien Torture Statue," as cited by the petitioner. 28 U.S.C. § 1350 (2009).

perpetrated against him in Haiti pursuant to 18 U.S.C. § 2340A. The petitioner has not named his 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 he was a victim of qualifying criminal activity and he 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 his 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. 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.