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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**

D14



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 06 2013

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:



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 that 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, counsel for the petitioner provides a statement on the Form I-290B, Notice of Appeal or Motion.

#### *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;

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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 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.

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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 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 South Korea who entered the United States on or about November 4, 2000. On July 17, 2007, an immigration judge issued an administrative final removal order, ordering the petitioner removed from the United States.

The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on March 10, 2009. Neither the petitioner nor his current counsel submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) in support of the I-918 U petition. On July 29, 2009, the director issued a request for further evidence (RFE) requesting the requisite certified Form I-918 Supplement B and evidence demonstrating that the petitioner had been the victim of substantial physical or mental abuse as a result of qualifying criminal activity. In response, counsel for the petitioner noted that the petitioner had not been able to contact a federal, state, or local authority who could certify that he was helpful in the course of the investigation of the criminal activity and requested more time to respond to the RFE. Counsel also submitted the petitioner's October 20, 2009 affidavit. In the affidavit, the petitioner declared that he had consulted with an attorney to obtain "green cards" for him and his family in February 2001 and that over time he paid the attorney \$6,000. The petitioner indicated that in 2004 he heard that the attorney had been arrested and put in jail. The petitioner claims

that the attorney filed false papers and that the attorney had betrayed his trust and had embarrassed him and his family. The petitioner declared that he has suffered severe stress from the attorney's fraud. The director found the petitioner's response insufficient to establish the petitioner's eligibility and accordingly, denied the petition on January 28, 2010. Counsel for the petitioner timely appealed.

On appeal, counsel asserts that the petitioner wanted to be helpful to United States Citizenship and Immigration Services (USCIS) in "enforcing this crime of which he was a victim but he did not know how." Counsel contends that USCIS has failed to provide any public instruction or notice as to how a petitioner is to be helpful to USCIS and this lack of public notice makes the denial of the petition unfair and illegal. Counsel also contends that USCIS must provide public notice of the procedure to be followed by prospective applicants who have been helpful or tried to be helpful but have been ignored or rebuffed by the authority from whom they requested a certified Form I-918 Supplement B. Counsel asserts that it is an illegal violation of the Administrative Procedures Act Section 553 for USCIS to proceed without rulemaking on this issue.

#### *Law Enforcement Certification*

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 I-918 U petition must be filed with the Form I-918 Supplement B, 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.* While we recognize the difficulties that a petitioner may face in obtaining a law enforcement certification or a certification from an appropriate agency, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1).

The AAO disagrees with counsel's contention that USCIS must proceed with further rulemaking pursuant to section 553 of the Administrative Procedures Act, to identify all the ways an alien who is the victim of a qualifying crime may obtain the requisite certified Form I-918 Supplement B. USCIS has promulgated regulations for the classification of victims of criminal activity and eligibility for "U" nonimmigrant status. 72 Fed. Reg. 179, 53014 - 42, 53025 (Sept. 17, 2007). The burden of obtaining the required law enforcement certification is on the petitioner.

USCIS cannot accept other evidence in lieu of the Form I-918 Supplement B certification completed and signed by a certifying official as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). As the

petitioner has failed to submit the certification required by section 214(p)(1) of the Act, he has not overcome the director's denial decision. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and his petition must be denied.

*Victim of Qualifying Activity*

The petitioner has not demonstrated that he was a victim of a qualifying crime or criminal activity. In the petitioner's October 20, 2009 affidavit submitted in response to the director's RFE, the petitioner declared only that the attorney he had hired filed false papers and that he had been the victim of fraud. Fraud is not a qualifying crime or criminal activity, as that term is defined in the regulation at 8 C.F.R. § 214.14(a)(9). 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 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 Form I-918 Supplement B and has provided no evidence from a certifying official that a certifying agency was investigating or prosecuting any alleged crime. 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.

*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.