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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 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:

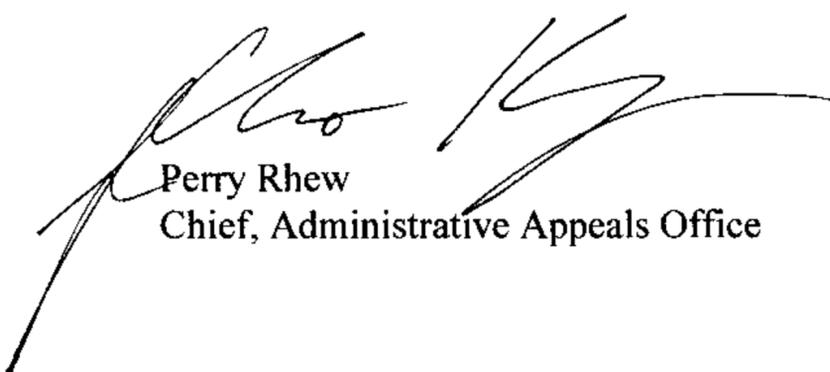
SELF-REPRESENTED

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 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 she has been the victim of a qualifying crime or criminal activity and she, therefore, could not meet any of the eligibility criteria for U nonimmigrant status. On appeal, the petitioner submits a personal statement and an affidavit from a coworker who witnessed the theft of the petitioner's waitressing tips.

*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:

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of the Department 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:

(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.

The first eligibility requirement for U nonimmigrant classification is further explicated in the regulation at 8 C.F.R. § 214.14(b)(1), which states:

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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the immigration court. On April 5, 2005, an immigration judge denied the petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). On November 2, 2006, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal.

The petitioner filed the instant Form I-918 on January 14, 2008. On October 1, 2009, the director issued a request for evidence (RFE), notifying the petitioner that the crime listed on the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) was not a qualifying crime or criminal activity. The director asked the petitioner to submit, among other items, evidence to demonstrate that the crime listed on the Supplement B could be considered a crime related to one of those enumerated at section 101(a)(15)(U)(iii) of the Act. 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 petition.

On appeal, the petitioner states that she has suffered mental damage as a result of her victimization. The petitioner states her belief that she is qualified for U nonimmigrant status and asks that her petition be reconsidered. The petitioner's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

### *The Offense of Which the Petitioner was a Victim*

When filing her U petition, the petitioner submitted a Form I-918 Supplement B that was signed by [REDACTED] Chief of Police, Mauston, Wisconsin, on January 1, 2008. [REDACTED] indicated the crime as "theft," and listed the statutory citation for the criminal activity that was being or had been investigated or prosecuted as "943.20(1)(a)." [REDACTED] briefly described the criminal activity as: "Theft of a tip jar from the Restaurant: Individual named in Part 1 is 'victim.'" [REDACTED] further

stated that there was no known or documented injury to the petitioner.

In her personal statement, the petitioner claimed that she was the victim of "Severe Robbery and Felonious Assault." She recounted that she was a waitress at a Chinese restaurant when two "guys" walked in and told her they wanted to eat, so she showed them to a table. The petitioner stated further that as she was walking them to their table (she was walking in front of them), they attacked her from behind and stole a bag of tips that were tied to her waist, and then ran away. According to the petitioner, a man who saw the two individuals run out of the restaurant wrote down the license plate number of the car and the individuals were eventually arrested by the police. The petitioner also wrote in her personal statement that she was the victim of other crimes as well, which she referred to as assaults and robberies. The petitioner stated that she never reported these other crimes or went to the hospital for medical care because she does not speak English or have legal immigration status in the United States, and she has little money.

*Theft Under Wisconsin Law is Not Substantially Similar to a Qualifying Crime*

Section 943.20(1)(a) of the Wisconsin Statutes Annotated (W.S.A.) states that a person commits theft when he or she "intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property." W.S.A. § 943.20(1)(a) (West 2010). The crime of theft is not specifically listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime. A particular crime of theft could, however, be a qualifying crime if a petitioner establishes that it is a "similar activity" to qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Thus, the nature and elements of the theft offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The record in this case does not demonstrate that theft under Wisconsin law is substantially similar to any qualifying criminal activity enumerated in the statute.

While the petitioner claims that she was the victim of felonious assault, the record contains no evidence that the Mauston, Wisconsin Police Department, the certifying agency in this case, ever investigated or sought to prosecute the perpetrators of the theft for that qualifying crime. We recognize that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated the crime as felonious assault or anything other than a theft. Although the petitioner states that she has been the victim of other robberies and assaults in the past, she has not submitted a Form I-198 Supplement B to establish her victimization of any crime other than the theft of her restaurant tips that occurred in Wisconsin in March 2007.

The petitioner has not demonstrated that the offense of which she was a victim is similar to any of the qualifying criminal activities enumerated at section 101(a)(15)(U)(iii). 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).

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish the other eligibility criteria listed at section 101(a)(15)(U)(i) of the Act, including the requirement to demonstrate 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 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. 8 C.F.R. § 214.14(b)(1).

On appeal, the petitioner submits a personal statement and an affidavit from her former coworker at the restaurant, Cia Feng Zheng. According to the petitioner, after the theft, she could not work for two weeks and "suffered damages mentally" from which she has been unable to recover. The petitioner states that the thieves injured her soft body tissue, and that she suffered from insomnia and a fear of walking at night. She also maintains that when she sees people who have the same skin color as the thieves, she trembles.

In her affidavit, [REDACTED] states that her parents own the restaurant where the petitioner worked during the theft and was present when it occurred. She states that the petitioner "physically could not work normally in two months and had to work part time." [REDACTED] states that the petitioner was hurt worse mentally than physically because every time she saw individuals who had the same skin color, and were the same age and gender as the thieves, the petitioner would have "intense fear." [REDACTED] also states that the petitioner would be frightened when customers said hello and that the petitioner suffered from insomnia.

While we do not minimize what the petitioner experienced as a result of the theft, her statement and the affidavit submitted on her behalf do not provide the essential details to demonstrate that she has suffered substantial physical or mental abuse as a result of the theft. The record contains no other evidence regarding, for example, any mental health counseling or intervention that the petitioner may have sought or received as a result of the theft, which occurred more than three years ago. The petitioner also does not describe how her victimization has affected her ability to function on a daily basis or explain in detail the long-term effects, if any, of being the victim of a theft. While the

petitioner states that she suffered from insomnia in the past, she does not maintain that insomnia continues to plague her. As mentioned earlier, although the petitioner claims to have been the victim of other assaults and robberies, she failed to submit a Form I-918 Supplement B attesting to such victimization and does not state or otherwise explain that they caused her substantial physical or mental abuse. Accordingly, the petitioner has not demonstrated that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

*Conclusion*

The petitioner has not established that she was the victim of a qualifying crime or criminal activity and, therefore, she has also failed to establish all other eligibility criteria 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 remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.