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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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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **OCT 19 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:

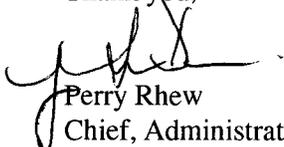
[REDACTED]

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) 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 had been the victim of a qualifying crime or criminal activity, as set out at Section 101(a)(15)(U)(iii) of the Act, and the petitioner consequently 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 submits a brief and other documentation. Counsel states that trafficking, which is a crime enumerated at section 101(a)(15)(U)(iii) of the Act, is similar to the crime of which the petitioner was a victim. Counsel also asserts that the petitioner suffered from the perpetrators' false imprisonment, kidnapping, and hostage taking and that the petitioner freely gave her statement to U.S. Customs and Immigration Enforcement (USICE) agents regarding these crimes.

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:

(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.

(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 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;

(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. On September 15, 2005, the petitioner was arrested, along with 31 others, as undocumented aliens, in [REDACTED]. On November 3, 2005, the petitioner was issued a Form I-94, authorizing her parole into the United States pursuant to section 212(d)(5) of the Act. On October 16, 2007, the petitioner was served with a Form I-862, Notice to Appear, (NTA) and placed into removal proceedings before the immigration court.

The petitioner filed the instant Form I-918 on October 1, 2007. On March 30, 2009, the director issued a Request for Evidence (RFE) to demonstrate that the crime listed on the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), was similar to any of the specifically enumerated qualifying crimes or criminal activity defined in section 101(a)(15)(U)(iii) of the Act. Counsel for the petitioner responded to the RFE on June 22, 2009, noting that the petitioner had been granted interim relief prior to the publication of regulations implementing the U classification. The director found the petitioner's response insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed.

On appeal, counsel maintains that the petitioner has established that she is a victim of a qualifying crime. Counsel asserts that the crime for which the perpetrators in this matter were convicted, "Conspiracy to Transport and Harbor Illegal Aliens," 8 U.S.C.A. § 1324(a)(1)(A)(v)(I), includes similar elements of the federal crime of trafficking as defined at 18 U.S.C.A. § 1590. Counsel contends that because both crimes incorporate transporting, concealing, harboring, and moving people illegally in the United States, the crimes are substantially similar.

The Offense of Which the Petitioner was a Victim

When filing her U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Verification (Form I-918 Supplement B) that was signed by Special Agent [REDACTED], USICE, on October 3, 2007. The criminal acts that were indicated at item #1, Part 3 of the form were extortion, false imprisonment, hostage, conspiracy to commit any of the named crimes, unlawful

criminal restraint, and other – transport aliens. At item #3, Part 3 of the form, “8 USC 1324(a)(1)(A)(v)(I)” was listed as the statutory citation for the criminal activity that is or was being investigated or prosecuted. Section 1324(a)(1)(A)(v)(I) of the United States Code defines this crime for which three perpetrators were convicted as:

(1)(A) Any person who--

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

Counsel for the petitioner in this matter refers to the federal offense of trafficking in persons at 18 U.S.C. § 1590, which states in pertinent part:

Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).

According to the petitioner's statement, dated October 4, 2007, she met a man at the border who told her he could get her across the border, she accepted his offer and after riding in a truck with another group of people for about two hours, she and the others were led into the desert. The petitioner indicated that they walked through the desert about a week until they arrived at a house. The petitioner reported that the "coyotes" then made the group stay there like prisoners and one of the coyotes extorted money from a fellow smuggler who they took from the house. The petitioner stated that they were locked up for about four days until immigration agents came and arrested all of them. The petitioner indicated that agent [REDACTED] told her and her family that he would let them "pass" if they identified the kidnapers and traffickers. The petitioner noted that although she was scared of the coyotes," she wanted to cooperate with the agent because he treated them very well and he and his men helped them.

Conspiracy to Transport and Harbor Illegal Aliens under Federal Law is Not Substantially Similar to the Qualifying Crime of Trafficking

For an offense to constitute a "similar activity" to a qualifying crime under section 101(a)(15)(U)(iii) of the Act, the nature and elements of the 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 crime of conspiracy to transport and harbor illegal aliens lacks the element of moving or obtaining such aliens for the purpose of securing their labor or services, which is central to the crime of human trafficking. The two crimes are also dissimilar because the nature of conspiracy to transport and harbor illegal aliens lies in the mere movement or concealment of undocumented individuals. In contrast, the nature of human trafficking centers on the movement of individuals in order to obtain the benefits of their labor or services.

Counsel notes that the definition of a crime of conspiracy to transport and harbor illegal aliens includes words that are also used in section of 18 U.S.C.A. § 1590 for the crime of trafficking for peonage, slavery, involuntary servitude or forced labor. While the two statutes both contain the words "harbors" and "transport," the offenses are not substantially similar because the crime for which the petitioner is a victim, as set out at item #3, Part 3 of the Form I-918 Supplement B, does not include the element of transporting or concealing aliens for the purpose of obtaining their labor or services, a central element in the crime of human trafficking. The record indicates that the petitioner voluntarily sought out and agreed to accompany the perpetrators of the crime and does not support a conclusion that the perpetrators subjected the petitioner to human trafficking.

Additionally, the record contains no evidence that the United States Attorney's Office or USICE, the certifying agency in this case, investigated or prosecuted the perpetrators for human trafficking or for extortion, false imprisonment, hostage taking, or unlawful restraint. Although item #1, Part 3 of the Form I-918 Supplement B lists these criminal offenses, the certifying agency does not cite a specific federal, state, or local statute indicating that it was investigating or prosecuting these crimes. We

also 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 perpetrators for human trafficking, extortion, false imprisonment, hostage taking, or unlawful restraint. The Form I-918 Supplement B, although listing a number of possible qualifying crimes, states that the only offense involved is conspiracy to transport and harbor illegal aliens. The relevant evidence also contains no indication that the certifying agency intends to investigate or prosecute the perpetrators for human trafficking or other qualifying crimes as the perpetrators pled guilty to and were sentenced for conspiracy to transport and harbor illegal aliens.

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 [REDACTED] 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she 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 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 has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based, as required by section 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 she was the victim of a qualifying crime or criminal activity, she 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

Although the petitioner was helpful in the investigation and ultimate conviction of three perpetrators

of criminal activity involving conspiracy to transport and harbor illegal aliens under section 8 U.S.C. 1324(a)(1)(A)(v)(I) 817.034(4)(b), such offense is not a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that the perpetrators were investigated or prosecuted for any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that she meets any of the statutory eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her 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.