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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



D14

DATE: **DEC 05 2011** Office: VERMONT SERVICE CENTER FILE:

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, with a fee of \$630. 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 petition will remain denied.

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.

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[.]

The regulation at 8 C.F.R. § 214.14(a)(14) provides the following, pertinent definition:

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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of

qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 214.14(b), which states, in pertinent part:

(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[.]

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Pertinent Facts and Procedural History

The petitioner is a citizen of Honduras who was born on [REDACTED]. The petitioner entered the United States on or about August 12, 2006 without inspection when he was 15 years old. The petitioner was subsequently apprehended by U.S. Customs and Border Protection (CBP) and placed into removal proceedings.¹ The record indicates that the petitioner was initially held at an adult detention facility, but was then transferred to a juvenile detention facility in [REDACTED] which was subsequently closed due to investigations of sexual abuse by the facility's staff.

The petitioner filed the instant Form I-918 on May 1, 2008. The director later issued a Notice of Intent to Deny (NOID) the petition for failure to establish that the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The director determined that although the petitioner was present at the detention facility at the time criminal activity occurred, the petitioner himself was not the victim of any criminal offense and he did not suffer substantial physical or mental abuse as a result of the crimes committed against other

¹ The petitioner remains in proceedings before the San Antonio, Texas Immigration Court and his next hearing is scheduled for March 29, 2012.

individuals. The director found the petitioner's response to the NOID insufficient to establish his eligibility and denied the petition on October 8, 2010. The petitioner's representative timely appealed.

On appeal, the petitioner's representative asserts that the U Nonimmigrant Status Certification (Form I-918 Supplement B) completed by the sheriff [REDACTED] establishes that the petitioner was the victim of attempted sexual assault, a qualifying crime, and attempted indecency with a child, which qualifies as child abuse under Texas law and is similar to the qualifying crime of domestic violence. The petitioner's representative further claims that the psychological evaluation of the petitioner submitted below demonstrates that he suffered substantial mental abuse as a result of his victimization. The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal fail to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

The Criminal Activity Perpetrated Against the Petitioner

The record contains media reports regarding the investigation and ultimate prosecution of sexual assault by a staff member at [REDACTED] which occurred while the petitioner was held there. The petitioner's U nonimmigrant status certification was completed by [REDACTED]. On the certification at Part 3.1 regarding the criminal act of which the petitioner was the victim, the sheriff marked "attempt to commit any of the named crimes," but did not specify any underlying crime. At Part 3.3 regarding the crimes investigated or prosecuted, the sheriff stated "attempted sexual assault and/or indecency with a child Texas Penal Code [TPC] section 22.011; 21.11." In describing the petitioner's involvement in the crime that was investigated and prosecuted at Part 3.5, the sheriff stated:

There was illegal sexual activity occurring in the [REDACTED]. This was successfully prosecuted, and a perpetrator is now in prison as a result of investigations by the [REDACTED]. [The petitioner] claims that the perpetrator attempted to carry out unlawful contact against him, but that he was able to repel her advances. He sent his statement via fax to the Sheriff's office through his representative during the investigation.

At Part 3.6 of the certification that asks for a description of the injury to the victim, the sheriff stated, "None."

In his April 23, 2007 affidavit, the petitioner stated that a female employee at the [REDACTED] center "wanted to do sexual things with many boys in the detention center, and she said thing to me and to a friend of mine who is Salvadoran. She would pass papers to my friend with inappropriate things." The petitioner recounted that he "did not want to do anything with her," but she threatened to deny food to him and his friends. When the petitioner said he would report her to social workers, she punished him by not letting him go outside or watch television, not letting him make or receive telephone calls and once making him sleep in the hallway for four days. The petitioner did not report her actions because she threatened to deny him access to help so that he would be deported. When the woman

tried to get the petitioner and other boys to fight each other and they declined, she told them they were not men. The petitioner also stated that she would ask him and his friend if they had girlfriends and other inappropriate questions.

In his April 1, 2010 evaluation of the petitioner (in affidavit form), [REDACTED] clinical psychologist, summarized the petitioner's account of his stay at the [REDACTED] quoted the petitioner as stating that the female employee would watch him and other boys while they were showering and would try to touch them. According to [REDACTED] account of the petitioner's statements, when the petitioner would not let the woman massage his hands, she punished him by not allowing him to watch television or go outside. [REDACTED] further stated: "I believe that [the petitioner] was a victim of sexual abuse . . . although it is hard to determine to what extent because of his reluctance to discuss this in much detail."

Victim of Qualifying Criminal Activity

Contrary to the petitioner's representative's claim on appeal, the law enforcement certification does not establish that the petitioner was the victim of qualifying criminal activity. The requisite U nonimmigrant status certification must state that the petitioner "has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). Here, the sheriff indicated at Part 3.1 of the certification that the petitioner was the victim of attempt to commit unspecified crimes and stated at Part 3.3 that his agency investigated and prosecuted "attempted sexual assault *and/or* indecency with a child Texas Penal Code 22.011, 21.11" (emphasis added). The certification does not clearly state that the petitioner was the victim of the qualifying crime of attempted sexual assault.

The remaining, relevant evidence also fails to demonstrate that the petitioner was the victim of attempted sexual assault. Sexual assault under TPC § 22.011 requires sexual contact. Although [REDACTED] reported the petitioner as stating that the female employee at the [REDACTED] "would try to touch us," the petitioner himself does not indicate that she ever attempted physical contact with him. Rather, the petitioner stated in his affidavit that she "wanted to do sexual things with many boys in the detention center, and she said things to me and to a friend of mine . . ." While the female employee's interactions with the petitioner were clearly inappropriate, the record is insufficient to show that the petitioner was the victim of her attempted sexual assault under TPC § 22.011.

The record also fails to demonstrate that indecency with a child under TPC § 21.11 is similar to any qualifying crime. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "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). On appeal, the petitioner's representative asserts that indecency with a child is equivalent to child abuse, which is similar to the qualifying crime of domestic violence, but the representative fails to engage in the requisite statutory analysis of these offenses. In her July 21, 2010

letter, [REDACTED] Incorporated, also asserts that the petitioner was the victim of child abuse under section 261.401(a)(1) of the Texas Family Code.³ However, [REDACTED] and the petitioner's representative both fail to show that the nature and elements of child abuse under Texas law are substantially similar to the qualifying crime of domestic violence. The plain language of the term "domestic violence" denotes that the crime must be committed against a family or household member. In Texas, family violence is committed "by a member of a family or household against another member of the family or household" or "by a member of a family or household toward a child of the family or household." Tex. Fam. Code Ann. § 71.004 (West 2011). In this case, the perpetrator of the offense against the petitioner had no familial or household relationship with him.

The record shows that the petitioner was harmed by the female employee of [REDACTED]. However, the relevant evidence does not establish that the harm inflicted upon the petitioner constituted qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.

Indirect Victim

On appeal, the petitioner's representative asserts that the director erred by not considering whether the petitioner was the indirect victim of qualifying criminal activity. The representative asserts that the petitioner "was the eye-witness to the physical assault against another child . . . and was the victim of sexual advances against himself and other boys at the facility." Although the petitioner himself did not discuss witnessing any physical assault in his affidavit, [REDACTED] quotes the petitioner's detailed description of the guards beating up his roommate at the [REDACTED]. However, the relevant evidence does not show that the petitioner witnessed the sexual assault of other individuals at [REDACTED] facility. In his evaluation, [REDACTED] explicitly questioned the petitioner regarding the female employee's actions: "Did she ever have any sexual contact with you or any of your friends?" In response, [REDACTED] quoted the petitioner as stating, "I never saw this, but I did see the El Salvadoran get letters from her saying that she wanted to take him with her when he got out of [REDACTED]. I never saw her do anything sexual with him, but I knew they had some type of relationship."

Regardless of any assault he witnessed, the petitioner does not meet the regulatory definition of an indirect victim. The regulation at 8 C.F.R. § 214.14(a)(14)(i) prescribes that only certain immediate family members may be considered indirect victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter; or is incompetent or incapacitated. In this case, the petitioner did not witness murder or manslaughter; he was not related to the direct victim, and the

² [REDACTED] an attorney representing the petitioner in his civil suit against the federal government for injuries sustained while in detention.

³ This provision applies to agency investigations of abuse in certain facilities and states: "'Abuse' means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy." Tex. Fam. Code Ann. § 261.401(a)(1) (West 2011).

record does not indicate that the direct victim was incompetent or incapacitated. Accordingly, the petitioner is ineligible for U nonimmigrant classification as an indirect victim.

Substantial Abuse

Even if the petitioner had established that he was the victim of qualifying criminal activity, the record is insufficient to show that he suffered substantial physical or mental abuse as a result of such victimization. On appeal, the petitioner's representative asserts that [redacted] evaluation establishes that the petitioner suffered substantial mental abuse as a result of sexual abuse he experienced at the [redacted]. A full reading of [redacted] evaluation fails to demonstrate such a connection. [redacted] diagnosed the petitioner with Posttraumatic Stress Disorder (PTSD) stemming from "the physical and mental abuse he suffered both while in Mexico and when he was detained in the U.S." Although [redacted] opined that the petitioner was the victim of sexual abuse while at [redacted] cautioned that "it is hard to determine to what extent because of his reluctance to discuss this in much detail." [redacted] further explained:

Since [the petitioner] has experienced multiple traumas, it is difficult to determine to what extent his PTSD is due to one particular trauma or another. However, it appears that his PTSD began during his travels in Mexico – after he witnessed train accidents and was kidnapped – and was then exacerbated by his prison experiences. The trauma that seems to have had the greatest impact on him, and which has caused him the most mental and emotional suffering, though, was that of being in prison. [The petitioner] is terrified of going back to jail and constantly obsesses over this.

[redacted] acknowledged that the sexual abuse the petitioner experienced at the [redacted] highly distressing to him – especially since he was only 15 years old at the time – and did exacerbate his previous traumas, even though the extent of this exacerbation cannot be fully determined." In addition, [redacted] explained that the results of his psychological testing of the petitioner "need to be interpreted with some caution since there were no appropriate age or cultural norms for the tests, and the tests were not in the language of the examinee."

[redacted] evaluation of the petitioner fails to establish that the petitioner suffered substantial mental abuse as a result of having been a victim of any qualifying crime while at the [redacted] stated that the predominant trauma the petitioner suffered was his detention in an adult jail before he was transferred to the [redacted]. Although he indicated that the petitioner's experiences at the [redacted] may have exacerbated his PTSD, [redacted] repeatedly cautioned that the extent of that exacerbation and the specific causes of the petitioner's PTSD could not be definitively identified. Moreover, [redacted] explained that the results of his psychological testing of the petitioner had to be interpreted with caution given the lack of age, culturally, and linguistically appropriate norms.

Apart from [redacted] evaluation, the record contains no other, relevant evidence of abuse. In his affidavit, the petitioner stated that he was threatened by the female employee at the [redacted] that she denied him telephone calls, time outside and the opportunity to watch television. The

petitioner does not discuss any other aspects of the harm he endured while at the

The record fails to establish that the petitioner was the victim of qualifying criminal activity. Even if such victimization was demonstrated, however, the relevant evidence also fails to show that the petitioner suffered substantial physical or mental abuse as a result of his victimization under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.14(b).

Conclusion

The petitioner has not demonstrated that he suffered substantial physical or mental abuse as a result of having been the victim of attempted sexual assault, domestic violence or any other qualifying criminal activity, as defined at subsection 101(a)(15)(U)(iii) of the Act, and as required by subsection 101(a)(15)(U)(i)(I) of the Act. He is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.