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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D14

DATE: DEC 20 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:

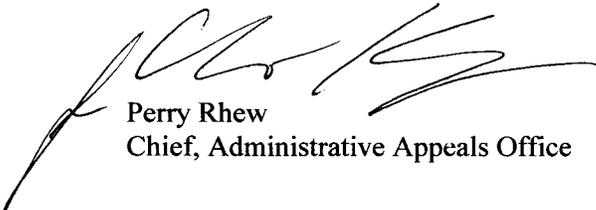


INSTRUCTIONS:

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 (the director), 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 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).

Factual and Procedural History

The petitioner is a citizen of Sri Lanka who entered the United States on September 21, 2000 as a nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on October 21, 2009. The director subsequently issued a Request for Evidence (RFE) on March 4, 2010 and a Notice of Intent to Deny (NOID) on June 29, 2010. The director found the petitioner's responses to the RFE and NOID insufficient to establish his eligibility and denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and, therefore, met any of the eligibility criteria at subsection 101(a)(15)(U)(i)(I) – (IV) of the Act.

On appeal, counsel submits additional evidence and a brief reasserting the petitioner's eligibility. 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.

Analysis

The U nonimmigrant status certification (Form I-918 Supplement B) was completed by [REDACTED] of the [REDACTED] certifying official). On the certification at Part 3.1 regarding the criminal act of which the petitioner was a victim, the certifying official listed "interference with custody," but failed to provide a statutory citation for the crime at Part 3.3. When describing the criminal activity at Part 3.5, the certifying official stated the following: "Victim's daughter left the [S]tate of Ohio traveling to Florida without the victim's knowledge. Victim's daughter had assistance by Adults, the case is still under investigation."

The petitioner stated in his affidavit, dated May 28, 2010, that his daughter, who was 15 years old at the time, converted to Christianity and left Ohio for Florida with the help of several adults, including a pastor. The petitioner submitted numerous media reports regarding his daughter's conversion and the subsequent events that transpired.

The criminal activity listed on the Form I-918 Supplement B (interference with custody) is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. 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). Counsel states on appeal that the crime of interference with custody is substantially similar to the qualifying crime of kidnapping, as that term is defined under Ohio law and section 1201 of Title 18 of the U.S. Code (U.S.C.).

Section 2919.23 of Ohio's Revised Code (O.R.C.) relates to interfering with custody and provides, in pertinent part:

(A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1), (2), or (3) of this section from the parent, guardian, or custodian of the person identified in division (A)(1), (2), or (3) of this section:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one[.]

* * *

Ohio Rev. Code Ann. § 2919.23 (West 2011)

Kidnapping under O.R.C. § 2905.01 is defined, in pertinent part, as: “No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person” (West 2011). Under federal law as described at 18 U.S.C. § 1201, kidnapping occurs when someone “unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof” (West 2011).

When responding to the director’s NOID, counsel stated that the elements of interference with custody and kidnapping under Ohio law are substantially similar because “both statutes state in general terms that no person shall take another person either by enticement or deception from the place from which they are found” (Emphasis in original). Counsel further contended that the same elements required for interference with custody under Ohio law are found in the federal definition of kidnapping, but failed to elaborate on the specific elements in each statute to which he was referring.

The nature and elements of custody interference and kidnapping under Ohio law are not substantially similar. A kidnapping crime under O.R.C. § 2905.01 involves restraining a victim’s liberty or moving him to another place by force, threat or deception, whether or not the victim is in a custodial arrangement. In contrast, a victim of custody interference under O.R.C. § 2919.23 must be in a custodial arrangement, but the perpetrator need not interfere through force, threat or deception, or either restrain the victim’s liberty or move the victim to another place.

Similarly, the federal kidnapping statute is not substantially similar to custody interference under Ohio law because the federal crime requires a victim to be held for a reward, ransom, or other such purposes, an element lacking in the Ohio statute. Accordingly, the petitioner has not demonstrated that the crime certified on the Form I-918 Supplement B is substantially similar to any of the qualifying criminal acts enumerated at section 101(a)915)(U)(iii) of the Act.

Conclusion

Qualifying criminal activity is requisite to each statutory eligibility criterion for U nonimmigrant classification. As the petitioner has failed to establish that he was the victim of qualifying criminal activity, he cannot meet any of the statutory requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act, including having suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity pursuant to subsection 101(a)(15)(U)(i)(I) of the Act.

The petitioner has not demonstrated that he was a victim of kidnapping or any other qualifying criminal activity, as defined at section 101(a)(15)(U)(iii) 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.