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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



D14

DATE: DEC 27 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:

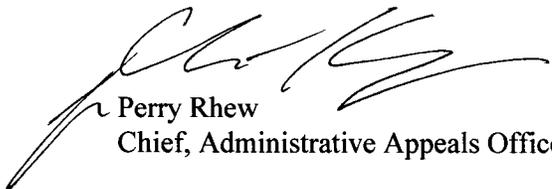


INSTRUCTIONS:

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) 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.

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) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 native and citizen of Mexico who entered the United States in June 2004 as a nonimmigrant visitor and is currently in removal proceedings before the Denver, Colorado Immigration Court.¹ The petitioner filed the instant Form I-918 U petition on May 10, 2010. On January 12, 2011, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner was the victim of qualifying criminal activity and met any of the statutory eligibility criteria. The petitioner timely appealed.

On appeal, counsel submits a two-page brief.

Analysis

On appeal, counsel asserts that the director erroneously presupposed that the perpetrator of qualifying criminal activity must be convicted in order for a petitioner to establish eligibility for U nonimmigrant status pursuant to 8 C.F.R. § 214.14(b). Our review of the director's decision does not reveal any statements indicating any such supposition. The statute and regulations require no conviction, only that the petitioner establish his or her helpfulness to the certifying agency's investigation or prosecution of the qualifying criminal activity of which he or she was the victim. 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). The director did not deny the petition because the perpetrator was not convicted, but because the petitioner did not establish that she was the victim of qualifying criminal activity.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted is signed by the Chief of Police, Avon, Colorado Police Department (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as serial burglary, stalking, and sexual contact, and provides at Part 3.3 the statutory citations for burglary, criminal trespassing, criminal attempt, drug possession, and unlawful sexual contact. The certifying official describes the petitioner's involvement in the criminal activity at Part 3.5 as follows: "[The petitioner] was the victim of a party suspected of committing a series of burglaries, trespassing into residences and attempting sexual contact with females. . . ." The certifying official listed the date of the criminal activity as

¹ The petitioner's next hearing date is scheduled for February 23, 2012.

December 14, 2008, and the record contains the investigative report that was prepared by the responding police officer pursuant to a 911 emergency telephone call. The officer identified the crime that was being investigated as “first degree criminal trespass – residence,” with a statutory citation for the crime as Colorado Revised Statutes (CRS) § 18-4-502. According to the report’s narrative, the petitioner called police because a man was looking into her apartment and she did not know his identity.

In her victim impact statement submitted in response to the director’s RFE, the petitioner described events that she stated occurred between [REDACTED], but did not provide any specific dates for the incidents. She claimed that one night while she was sleeping she woke up to see a man with no shirt on taking off his pants. The petitioner screamed, which alerted her sister who called the police. The petitioner did not indicate that the police completed a report of the incident. The petitioner stated that she saw the man from her bedroom again when she was at the Laundromat and that the same man returned in July 2006 and tried to open her balcony door but ran away when he saw her coming. Regarding the December 2008 incident that is the subject of the law enforcement certification, the petitioner stated that she was asleep in her bedroom and when she woke up, she saw the same man on her balcony but he jumped down and ran away.

Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of unlawful sexual contact, the accompanying police report, which describes the December 14, 2008 criminal activity, only indicates that the petitioner was the victim of criminal trespassing. The certifying official states at Part 3.5 that the petitioner “was the victim of a party suspected of a series of burglaries, trespassing into residences and attempting sexual contact with females,” but does not identify the petitioner as one of these females or the victim of any other burglary or unlawful sexual contact. While it is clear that the petitioner was helpful to the police in identifying the perpetrator of these crimes against other individuals, the Form I-918 Supplement B does not support a conclusion that the petitioner was the victim of burglary or unlawful sexual contact. As stated earlier, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4). Accordingly, we consider the certified crime as criminal trespassing under CRS § 18-4-502 only, and not unlawful sexual contact.

The crime of trespassing is not specifically listed as a qualifying crime 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 that an unlawful sexual contact crime is similar to a sexual assault, and that burglary is similar to sexual assault when the perpetrator is present in a victim’s home with the intent of completing the sexual assault. Counsel refers to the petitioner’s description of the perpetrator being in her home at some point prior to 2008 as evidence of an attempted sexual assault; however, this alleged

incident is not the criminal activity certified on the Form I-918 Supplement B, which states that the criminal activity occurred on December 14, 2008. The record shows that the only crime committed on December 14, 2008 against the petitioner was criminal trespassing.

Counsel has not demonstrated that the nature and elements of criminal trespassing under CRS § 18-2-502 are substantially similar to sexual assault, abusive sexual contact or any other qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Under Colorado law criminal trespassing occurs when a person “knowingly and unlawfully enters or remains in a dwelling of another or if such person enters any motor vehicle with intent to commit a crime therein.” CRS § 18-2-502 (West 2011). Criminal trespassing contains no element of assault, abuse or sexual contact.

To be eligible for U nonimmigrant classification, petitioners must establish that they were helpful to the investigation or prosecution of qualifying criminal activity of which they themselves were victims. 8 C.F.R. § 214.14(b)(2), (c)(2)(i). Contrary to counsel’s assertion on appeal, the record contains no evidence that the petitioner was the victim of any qualifying crime that the certifying agency investigated or prosecuted. Although the petitioner was helpful in the investigation and prosecution of the perpetrator for attempted unlawful sexual contact against other victims, the record does not establish that the petitioner herself was a victim of such crime or any other qualifying criminal activity.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. Her failure to establish that she was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) 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.

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