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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**

[REDACTED]

D14

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JAN 12 2011**

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)

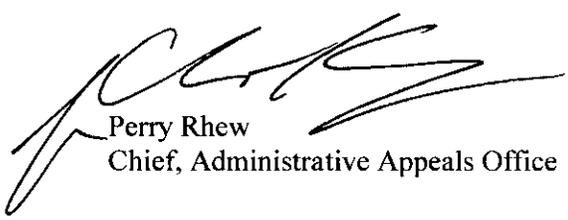
ON BEHALF OF PETITIONER:

[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.

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 sustained. .

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 he had been the victim of a qualifying crime or criminal activity and he, therefore could not establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submitted a brief and stated that he would submit additional evidence within 30 days, or by September 16, 2010. As of this date, we have not received any supplemental evidence and we consider the record complete and ready for adjudication.

*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[.]

In addition, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of El Salvador, who was born on December 28, 1993. On or about October 18, 2008, the petitioner entered the United States without inspection by crossing the Rio Grande River, where he was eventually encountered by officers of United States Customs and Border Protection (USCBP). The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on May 12, 2009, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The Form I-918 Supplement B was signed by [REDACTED] Captain-Criminal Investigations, Hidalgo County Sheriff's Office, and dated February 6, 2009. At Part 3.1 Cpt. [REDACTED] identifies the criminal activity of which the applicant was a victim as sexual assault, Trafficking, and "Other – Witness." At Part 3.3, the statutory citation(s) for the criminal activity being investigated or prosecuted is listed as Texas Penal Code – 22.021 Aggravated Sexual Assault – First Degree Felony. At Part 3.5, [REDACTED] describes the criminal activity being investigated and/or prosecuted and the involvement of the petitioner as follows:

[The petitioner] was kidnapped and held hostage at gun point for ransom. [The petitioner] is collaborating with the Sheriff's department in the investigation by identifying the individuals that held him. The Sheriff's department is currently investigating the individuals involved in the kidnapping and linking this incident with another incident in the South Texas region.

At Part 3.6, the known injuries are listed as: "(Witness) [the petitioner] no known injury. (Victims) 3-females were sexually assaulted."

Cpt. Montemayor notes in Part 4 of the Form I-918 Supplement B that the petitioner possesses information concerning the criminal activity listed in Part 3 and has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity. In Part 4.5, [REDACTED] states:

On December 11, 2008, [the petitioner] collaborated in the investigation by meeting with three ICE agents. [The petitioner] identified several of the individuals who kidnapped him through a photo line-up. [The petitioner] also answered the ICE

investigator's questions.

The Sheriff's office is not currently investigating the incident in which [the petitioner] was the victim. The Sheriff's office is investigating another incident in the South Texas region that involves the same kidnappers as [the petitioner's] case. [The petitioner] has been helpful to the investigation and prosecution of the individuals.

The record includes electronic mail correspondence confirming that representatives U.S. Immigration and Customs Enforcement (USICE) planned to interview the petitioner and two other minors in regard to incidents occurring from October 15, 2008 to October 21, 2008 that involved an alien smuggling venture. The AAO observes, however, that USICE is not the certifying agency in this matter.

In a declaration, dated April 13, 2009, the petitioner described the criminal activity that the Hidalgo Sheriff's Office investigated as follows: On or about October 18, 2008, the petitioner entered the United States without inspection by crossing the Rio Grande River. The next day he and a group of about 14 people walked nine hours until they were accosted by four individuals with guns. He and the other members of the group were held at gunpoint while the perpetrators demanded money. The perpetrators demanded telephone numbers from the petitioner and the other individuals' relatives in the United States. The petitioner and others were held overnight while the relatives were gathering money. The petitioner heard two of the women in the group being raped. Once the perpetrators had received wire transfers of the ransom, the perpetrators left. The petitioner and the group walked until they were picked up by USCBP officers.

In his denial letter, the director determined that because the certifying agency identified the petitioner as a witness at Part 3.1 of the Form I-918 Supplement B, and identified the statutory citation for the criminal activity being investigated or prosecuted as Texas Penal Code -22-021 Aggravated Sexual Assault-1<sup>st</sup> Degree Felony, at Part 3.3, the petitioner had not been identified as being the victim of a qualifying crime. The director concluded, therefore, that the petitioner was not the victim of a qualifying crime or criminal activity and denied the petition on this basis, noting that the petitioner could not establish any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act.

On appeal, counsel notes that the certifying official's statements on the Form I-918 Supplement B acknowledge the petitioner's kidnapping and that the Sheriff's Department was investigating the petitioner's kidnappers in connection with another crime. Counsel states that the director's decision is erroneous in light of the information on the Form I-918 Supplement B.

*The Crime or Criminal Activity of Which the Petitioner was a Victim*

The regulation at 8 C.F.R. § 214.14(a)(14) defines *victim of qualifying criminal activity* as an alien who is directly and proximately harmed by qualifying criminal activity. Although sexual assault (rape) is listed as the statutory citation for the crime that was investigated and prosecuted, the petitioner was not a victim of that crime, as he was not directly or proximately harmed during the

rape of the two women. Nevertheless, the Form I-918 Supplement B does establish that the petitioner's kidnapping, which is a qualifying crime, was detected and investigated during the course of the rape investigation. According to the Form I-918 Supplement B, the certifying agency indicates that the petitioner "was kidnapped and held hostage at gun point for ransom" and that the petitioner "is collaborating with the Sheriff's Department in the investigation by identifying the individuals that held him." In addition, the certifying agency notes that the petitioner "identified several of the individuals who kidnapped him through a photo line-up" and that the petitioner "also answered the ICE investigator's questions." The regulation at 8 C.F.R. § 214.14(a)(5) defines *investigation or prosecution* as "the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." Thus, the certifying agency acknowledges that it not only detected the petitioner's kidnapping, but also investigated that crime. The certifying agency also acknowledges that the petitioner helped investigators when he identified the kidnappers. As the petitioner assisted in the investigation, including the detection, of the qualifying crime of kidnapping as stated by the certifying agency on the Form I-918 Supplement B, the petitioner in this instance has established that he was a victim of a qualifying crime or criminal activity. Accordingly, the director's determinations to the contrary are withdrawn.

The record shows that the crime took place in the United States, the petitioner possessed information relating to the criminal activity, and that he helped in the detection and investigation of the qualifying crime of kidnapping. Regarding whether the petitioner has suffered substantial physical or mental abuse resulting from his kidnapping, the record contains the following relevant evidence: two declarations from the petitioner, dated April 13, 2009 and April 13, 2010; a letter, dated April 2, 2010, from [REDACTED], a social worker at the petitioner's school, who provides her observations of the petitioner's behaviors based on working with him one-on-one and in a group setting; and a declaration from the petitioner's mother. Under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence establishes that the petitioner suffered the requisite, substantial mental abuse.

#### *The Petitioner's Admissibility to the United States*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility.

The director denied the petitioner's Form I-192 waiver application solely on the ground that the instant Form I-918 U petition had been denied. We have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). As the sole ground for denial of the petitioner's Form I-192 waiver application has



Page 6

been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192.

**ORDER:** The appeal is sustained. Because the petitioner is statutorily eligible for U nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition.