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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

§ 14

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 24 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.

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 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 occurring in the United States and the United States lacked jurisdiction to prosecute the petitioner's rape in Guatemala. On appeal, counsel submits a brief.

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 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 . . . :

(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. The petitioner is a citizen of Honduras who entered the United States without inspection in June 2006. On June 20, 2007, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On August 27, 2007, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action.

The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on January 28, 2008. Counsel submitted the U Visa Certification Form that was previously submitted with the request for interim relief, and which was signed on May 30, 2007 by a police sergeant of the Charlotte-Mecklenburg, North Carolina Police Department. The police sergeant certified that the petitioner had been helpful in the investigation and/or prosecution of sexual assault in violation of North Carolina General Statute 14-27, Rape, which occurred on May 2, 2006 in Guatemala.

As referenced above, the director denied the petition determining that the criminal activity had not occurred in the United States and the United States did not have jurisdiction over criminal activity occurring in Guatemala.

On appeal, counsel asserts that the director improperly considered only that the qualifying crime occurred outside the United States and did not consider whether the crime violated a United States law that provided for extraterritorial jurisdiction to prosecute the offense in the United States. Counsel contends that the petitioner was the victim of sex trafficking as a child pursuant to section 5(2) – (3) of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 and that section 103(b) of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 provides for the extraterritorial jurisdiction to prosecute within the United States acts of sex trafficking occurring outside the United States.

Qualifying Criminal Activity in Violation of a U.S. Law providing for Extraterritorial Jurisdiction

The record does not support counsel's claim that the petitioner's rape in Guatemala was a form of sex trafficking covered by the TVPRA such that the crime could be prosecuted in the United States. The U Visa Certification Form identifies the crime of which the petitioner was a victim as North Carolina General Statutes Annotated § 27-14, which is rape. In her June 5, 2007 statement, the petitioner recounted that she decided to leave Honduras and come to the United States to support her family. She

stated that she entered an agreement with smugglers in Honduras, but was raped by one of the smugglers when they realized she could not pay them. The day after the rape, the petitioner escaped from the smuggler. In the North Carolina police report accompanying the petitioner's certification form, the officer noted, "I intend to forward this information to the proper authorities for an investigation."

As amended by the TVPRA, section 1591 criminalizes the sex trafficking of children and states, in pertinent part:

(a) Whoever knowingly --

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

Counsel asserts that the petitioner's rape is covered by this provision because she was under 18 at the time, the rape occurred while she was harbored by the smuggler and she was "smuggled within the stream or course of 'foreign commerce' between Honduras and Guatemala. Even if the petitioner's rape constituted sex trafficking under 18 U.S.C. § 1591, counsel has not established that U.S. law provides for extraterritorial jurisdiction over such crimes. Rather, counsel cites 22 U.S.C. §2152d(a) (as amended by TVPRA 2008), a provision of foreign relations law which simply authorizes the President to provide assistance to foreign countries to investigate and prosecute traffickers. Counsel cites no U.S. law that provides for extraterritorial jurisdiction to prosecute the petitioner's rape in a U.S. federal court, as required for a crime occurring outside of the United States to satisfy section 101(a)(15)(U)(i)(IV) of the Act pursuant to the regulation at 8 C.F.R. § 214.14(b)(4).

Moreover, the certifying agency in this case did not investigate or prosecute the petitioner's rape as sex trafficking. The Charlotte-Mecklenburg Police Department certified that the only criminal activity at issue in the petitioner's case was rape under the law of North Carolina. The record contains no evidence that the certifying agency ever investigated or prosecuted the petitioner's rape as a form of sex trafficking under federal law providing for extraterritorial jurisdiction over crimes committed outside of the United States.

The petitioner has failed to demonstrate that the offense of which she was a victim occurred in the United States or violated a U.S. law that provides for extraterritorial jurisdiction to prosecute the



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offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act and pursuant to the regulation at 8 C.F.R. § 214.14(b)(4). She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must remain denied.

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.