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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

B14

Date: JUN 07 2011 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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)

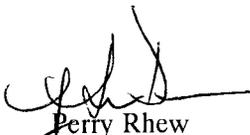
ON BEHALF OF PETITIONER: Self-represented

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 Petition for U Nonimmigrant Status (Form I-918 U 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 submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On appeal, the petitioner submits a Notice of Appeal (Form I-290B) indicating that he has obtained the requisite law enforcement certification, medical documentation and a Form I-918 Supplement B.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

(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[.]

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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 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).

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).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Haiti who, on July 13, 1999 was admitted to the United States as a nonimmigrant visitor. The petitioner remained in the United States past his authorized stay, which expired on January 12, 2000. On August 28, 2000, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On October 11, 2000, the Form I-589 was referred to an immigration judge and the petitioner was placed into immigration proceedings. On September 10, 2001, the immigration judge made an adverse credibility finding against the petitioner and denied his applications for asylum, withholding of removal and for protection under the Convention Against Torture, and ordered the petitioner removed from the United States. The petitioner filed an appeal with the Board of Immigration Appeals (BIA). On September 6, 2002, the BIA dismissed the petitioner’s appeal.

On April 11, 2008, the petitioner filed the instant Form I-918 U petition. On March 22, 2010, the director issued a Request for Evidence (RFE) to which the petitioner submitted a timely response. On August 10, 2010, after considering the evidence of record, including petitioner’s response to the RFE, the director denied the petition and the petitioner’s Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts that he has obtained an executed law enforcement certificate and submits the certificate along with medical documentation.

Analysis

The regulation prescribes that a Form I-918 U petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying

agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED] (certifying official) of the City of Fort Lauderdale Police Department. At Part 3.1, the certifying official indicated that the petitioner was the victim of criminal activity involving, or similar to, other: robbery, strong arm. [REDACTED] failed to provide the statutory citations for the criminal activity at Part 3.3. At Parts 3.5 and 3.6, Officer Etienne described the criminal activity being investigated or prosecuted as strong arm robbery and the known or documented injury to the petitioner as a minor abrasion to the left elbow. At Part 4.1 Officer [REDACTED] indicates that the petitioner does not possess information concerning the criminal activity listed in Part 3. An accompanying police report referenced in the Form I-918 Supplement B indicated that the petitioner was robbed of his money, wallet and cell phone by two men when he was working as a delivery person for Pizza Hut; however, like the Form I-918 Supplement B, the police report does not identify the section of Florida law relating to the offense.

Under section 812.13(1) of the Florida Statutes, “robbery” means:

The taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

Florida Statutes § 812.13 (West 2011).

The crime of robbery is not specifically listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime. A particular crime of robbery could, however, be a qualifying crime if a petitioner establishes that it is a “similar activity” to qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Thus, the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The petitioner does not relate the crime of which he was a victim to one of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, and we do not find that it is similar to any qualifying criminal activity enumerated in the statute.

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim

of qualifying criminal activity also prevents him 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.