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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

[redacted]

D14

DATE: JUN 27 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:

[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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The prior decision of the AAO will be affirmed.

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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(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.

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 over crimes committed in Guatemala.

On appeal, counsel asserted 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 contended that the petitioner was the victim of child sex trafficking and that the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 and 2008 provided for the extraterritorial jurisdiction to prosecute within the United States acts of sex trafficking occurring outside the United States.

The AAO dismissed the appeal because: (1) counsel failed to establish that the petitioner had been subjected to sex trafficking; (2) the sections of law cited by counsel did not provide for the extraterritorial jurisdiction to prosecute in a U.S. federal court the rape of the petitioner in Guatemala; and (3) the law enforcement certification contained no indication that the certifying agency had ever investigated or prosecuted the petitioner's rape in Guatemala as sex trafficking.

Counsel Fails to Overcome the Grounds for Dismissal

On motion, counsel submits a photograph of the applicant and her infant daughter who counsel states was born on August 23, 2010 in North Carolina.[1] Counsel asserts that "[t]he birth of applicant's child is a material fact which was not in evidence when USCIS denied applicant's I-918 petition." Counsel further states that he "will seek an Extreme Hardship Waiver such that applicant can seek to adjust her status in the United States."

Counsel fails to articulate the relevance of the child's birth to the petitioner's eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. Although children of an alien granted U nonimmigrant status may qualify for derivative U nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, any such petition would be premature because the petitioner herself has not been granted U nonimmigrant status.

Any waiver of inadmissibility based on extreme hardship is also irrelevant to the instant case. Hardship to family members apart from that related to the qualifying crime is not relevant to any eligibility ground for U nonimmigrant classification. *See* section 101(a)(15)(U)(i) of the Act, 8 U.S.C.

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[1] Counsel did not submit the birth certificate of the petitioner's child or other evidence of the child's birth, identity and biological relationship to the petitioner.

§ 1101(a)(15)(U)(i); 8 C.F.R. § 214.14. The petitioner's waiver based on such hardship is also not before the AAO. When a U petitioner is inadmissible to the United States, he or she must file a Form I-192, Application for Advance Permission to Enter as Non-Immigrant, with the Form I-918 Petition for U Nonimmigrant Status. 8 C.F.R. §§ 212.17(a), 214.14(c)(2)(iv). In this case, the petitioner's Form I-192 was denied and no appeal lies from such a denial. 8 C.F.R. § 212.17(b)(3). Although hardship considerations are relevant to adjustment of status applications filed by U nonimmigrants, the petitioner in this case has not been granted U nonimmigrant status and is ineligible to adjust her status on that basis. *See* Section 245(m)(l) of the Act, 8 U.S.C. § 1255(m)(l); 8 C.F.R. § 245.24(d)(11).

Conclusion

The birth of the petitioner's child after the instant petition was filed and any hardship that the petitioner or her child may face are not relevant to the petitioner's eligibility for U nonimmigrant status. Counsel provides no other basis for reopening the AAO's prior decision. On motion, counsel has failed to demonstrate that the petitioner was the victim of criminal activity which occurred in the United States or violated a U.S. law which provides for extraterritorial jurisdiction, 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). The petitioner is consequently ineligible for 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. Accordingly, the AAO's prior decision dismissing the appeal will be affirmed. The petition will remain denied.

ORDER: The January 24, 2011 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed. The petition remains denied.