

identifying data deleted to  
prevent identity misrepresentation  
invasion of personal privacy

**PUBLIC COPY**

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

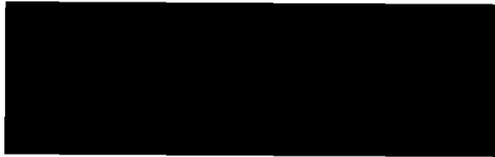
Date: **APR 09 2012** Office: VERMONT SERVICE CENTER

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, 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)(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.

The director denied the petition finding that the petitioner failed to establish that she was the victim of qualifying criminal activity because she was culpable for the criminal activity being investigated and/or prosecuted. The director also found that the petitioner had failed to establish that she had suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity. On appeal, the petitioner contends through counsel that she was the victim of the qualifying crime of prostitution, and that she meets the requirements for U nonimmigrant classification.

*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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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 term ‘any similar activity’ refers to 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).

However, “[a] person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14)(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).

#### *Facts and Procedural History*

The record reflects that the petitioner is a native and citizen of Guatemala who was paroled into the United States on June 17, 2009. On February 26, 2010, the petitioner filed the instant Form I-918 U petition. On June 17, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On March 11, 2011, 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, counsel asserts that the director failed to consider evidence submitted in response to the RFE and that the petitioner suffered substantial harm and is eligible because she was coerced and forced into working as a prostitute.

#### *Analysis*

The petitioner, in her January 22, 2010 statement, claimed that she began working as a prostitute for A-P<sup>1</sup>, at the end of 2002/beginning of 2003. She stated that she had refused to work for A-P- previously, but that she did not have sufficient funds to send to her children in Guatemala and she needed money. She stated that A-P- initially took the petitioner to a hotel because A-P- had a client and told the petitioner to attend to the client in A-P-’s place. She stated that A-P- told her that she would be paid \$150 but that she did not receive the full amount. She stated that A-P- took her to an apartment on the weekend where she would engage in prostitution while another man would monitor the men who would

---

<sup>1</sup> Name withheld to protect the identity of the individual.

come to the apartment and keep time for her. She stated that A-P- kept encouraging her to engage in this activity and discouraging her about life so that she would stay depressed and under her control. She stated that after working in Virginia for a week she stopped engaging in prostitution for a while and returned to her regular employment, but that, when her hours at work were cut and she again began to struggle for money, she returned to work for A-P-. She stated that she engaged in prostitution in several states, but she decided to stop in December 2003 or January 2004 because her mother objected. She informed A-P- that she no longer wished to engage in prostitution because she wished to be on good terms with her mother. The petitioner stated that A-P- offered her a position helping A-P- to buy food for the other girls in the organization instead, to which she agreed because she still needed money for her children. The petitioner described how A-P-'s business then became more dangerous and how A-P- began to date the petitioner's younger brother and threatened the petitioner and her mother to keep them silent about the business.

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Special Agent in Charge [REDACTED] (certifying official) of U.S. Immigration and Customs Enforcement (USICE). At Parts 3.1 and 3.3, the certifying official indicated that the petitioner was the victim of prostitution and cited the Mann Act at 18 U.S.C. § 2421 as the criminal activity investigated or prosecuted.

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as “[the petitioner] was recruited by the target of the investigation, [A-P-], to engage in prostitution. [A-P-] provided [the petitioner] with opportunities to continue this illegal activity in Maryland and adjoining States.” At Part 3.6, the certifying official stated that there were no known or documented physical injuries to the petitioner. At Part 4.5, the certifying official added that “[the petitioner] engaged in interviews with ICE and the U.S. Attorney’s Office to explain in detail the structure of the criminal organization. [The petitioner] maintained contact with Case Agent and made herself available for all requests from law enforcement. Subject testified at jury trial against [E-P-]<sup>2</sup> a member of the [A-P-] organization.”

A psychological report, dated February 3, 2010, from [REDACTED] psychology post-doctoral fellow, and [REDACTED] a licensed clinical psychologist, indicates that the petitioner described how she was involved in a prostitution ring between 2002 and 2005. Ms. [REDACTED] and Ms. [REDACTED] stated that the petitioner suffers from Dysthymic Disorder and Anxiety Disorder, not otherwise specified, manifesting in a depressed mood, disturbed sleep, feelings of hopelessness, detachment and low self-esteem.

In response to the request for evidence, counsel submitted a second statement from the petitioner, dated July 12, 2010, in which she stated that, due to her past experiences in her home country she was extremely vulnerable and easily manipulated. She stated that she wanted nothing to do with A-P-'s prostitution ring, but that A-P- kept pressuring her. She stated that the first time she worked for A-P- as a prostitute she was unaware of where she was going at first because A-P- asked her to run

---

<sup>2</sup> Name withheld to protect identity of individual.

an errand with her. She stated that they went to a hotel and A-P- told her that a friend of hers was waiting for her but that she would be unable to make it. She stated that when she told A-P- that she would not do it, A-P- told her that her friend would call A-P- when it was over and A-P- would come and pick up the petitioner. She stated that A-P- practically threw her out of the car. She stated that she did not have a cell phone, did not know where she was, did not have any money and did not know what to do. She stated that she thought she could reason with the man if she told him she was not a prostitute. She stated that he said he had already paid for her and she permitted him to undress her. She stated that she took a shower and then ran away. She stated that A-P- was waiting for her outside. She stated that she did not want to do it again but that A-P- kept pressuring her and made her feel like she had no other options. The petitioner's second statement contradicts her first statement in regard to how she was recruited into the prostitution ring, why she initially engaged in prostitution, the circumstances under which she initially engaged in prostitution and whether she was able to extricate herself from engaging in prostitution. The petitioner's first statement clearly indicates that the petitioner engaged in prostitution for monetary reasons and was able to cease engaging in prostitution for a period of time until she returned to engaging in prostitution for monetary reasons and was also able to obtain alternate employment from A-P- when she decided that she no longer wished to engage in prostitution.

USICE Senior Special Agent, in his letter submitted in response to the request for evidence, stated that the petitioner reported that it was A-P- who had recruited the petitioner into the prostitution business and allowed her to work as a prostitute in secret without her mother's knowledge. He stated that the U.S. Attorney's Office and SAC Baltimore joined in the application to support the petitioner's U-visa and certify her as a victim due to recruitment by A-P-, the leader of a large, violent prostitution organization and her full cooperation with law enforcement. He stated that the investigation showed that A-P- was a controlling individual who was able to manipulate members of the organization to follow her orders. did not indicate that A-P- forcibly recruited the petitioner and he stated that his agency's determination regarding the petitioner's victimization was "only for the initial recruitment into prostitution and not for any acts."

While we acknowledge the difficult circumstances the petitioner has faced, she is culpable of engaging in the prostitution of her own free will and consequently cannot be recognized as a victim of the crime of prostitution, *see* 8 C.F.R. § 214.14(a)(14)(iii) (If a petitioner "is culpable for the qualifying criminal activity being investigated or prosecuted[, she is] excluded from being recognized as a victim of qualifying criminal activity.").

### *Conclusion*

The petitioner has demonstrated that she possessed information regarding A-P-'s prostitution ring and that she was helpful to law enforcement agencies investigating and prosecuting that crime (which violated federal law and occurred in the United States). However, because she herself was culpable of prostitution, she does not meet the definition of a victim of qualifying criminal activity and she necessarily fails to meet the remaining eligibility requirement for U nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act (requiring such victimization).



Page 6

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.