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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**



D14

Date: **APR 24 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 petition will remain denied.

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 on the basis that the petitioner had failed to establish that she was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, counsel submits a Notice of Appeal (Form I-290B) and a brief reasserting the petitioner's eligibility.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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[.]

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 Mexico. On December 2, 2006, the petitioner was admitted to the United States as a nonimmigrant visitor. On September 7, 2010, the petitioner filed the instant Form I-918 U petition. On January 12, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On May 25, 2011, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

Certified Criminal Activity

The Form I-918 Supplement B was signed by [REDACTED] California Police Department on February 16, 2011. At Part 3.1, the certifying official indicated that the petitioner was the victim of felonious assault and robbery. At Part 3.3, the certifying official cited section 212.5(c) (robbery) as the applicable section of the California Penal Code (CPC) as the criminal activity investigated or prosecuted. At Part 3.5, the certifying official described the criminal activity and the petitioner's involvement as: "two black juveniles approached [the petitioner] from behind, grabbed her purse and pulled it from her grasp." At Part 3.6, the certifying official did not describe any known or documented injury to the petitioner. At Part 4, the certifying official described the petitioner's helpfulness as "later during the same day of the incident, two subjects were located who fitted the description given by [the petitioner]. [The petitioner] positively identified both subjects."

The attached police report stated: the certifying official was dispatched to a strong arm robbery; the petitioner was holding her purse in her right hand when two male black juveniles approached her from behind, grabbed the purse and pulled it from her grasp; the two suspects were later positively identified.

According to the petitioner's March 5, 2011 statement, two young men shoved her from behind and snatched her change purse, which she was carrying in her hand. The petitioner stated that, at the time the juveniles snatched her purse she lost her balance and crashed into a wall to her left side. The petitioner stated that she later positively identified the two juveniles for police.

Offense Was Not a Qualifying Crime

The statute and regulations require a law enforcement certification to verify the petitioner's victimization and eligibility under subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The regulations do not, however, delegate any authority to determine the petitioner's eligibility for U nonimmigrant classification to the

certifying agency; that authority rests with USCIS. Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). USCIS also determines “in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, ‘U Nonimmigrant Status Certification.’” 8 C.F.R. § 214.14(c)(4).

The certifying official indicated on the Form I-918 Supplement B that the petitioner was the victim of the qualifying crime of felonious assault; however, the certifying official stated that the only crime investigated or prosecuted was robbery under CPC § 212.5(c).

Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “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).

On appeal, counsel claims that the elements of robbery and felonious assault “are generally that same,” but counsel fails to engage in the requisite statutory analysis. Counsel cites no California state or federal statute of felonious assault whose nature and elements are substantially similar to the only crime certified in this case, robbery under CPC § 212.5(c). Counsel’s general, unsupported assertions are insufficient to demonstrate that the petitioner was the victim of a qualifying crime, as defined at section 101(a)(15)(U)(iii) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(a)(9).

Remaining Eligibility Criteria

The record shows that the petitioner was helpful to the certifying agency in its investigation of the robbery and that she possessed some information about the robbery. However, counsel has failed to demonstrate that robbery under CPC § 212.5(c) is substantially similar to any qualifying crime. Being a victim of qualifying criminal activity is a threshold requirement for all U nonimmigrant eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. *See* 8 C.F.R. § 214.14(b), (c)(2). Because the petitioner has not demonstrated that she was the victim of qualifying criminal activity, she cannot meet any of the eligibility criteria for U nonimmigrant classification.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.