

identifying data deleted to
prevent clearly unwarranted
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

814

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)

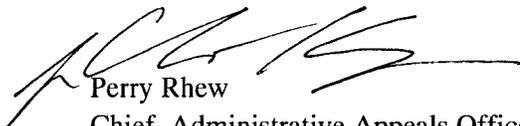
ON BEHALF OF PETITIONER:

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 memorandum of law 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 Peru. On February 8, 2000, the petitioner was admitted to the United States as a nonimmigrant visitor. On June 9, 2010, the petitioner filed the instant Form I-918 U petition. On August 23, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On April 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.

The Claimed Criminal Activity

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Commander Olmstead (certifying official) Head of Criminal Investigations.¹ At Part 3.1, the certifying official indicated that the petitioner was the victim of stalking. At Part 3.3, the certifying official cited section 609.749-2 (disturb-harassment or stalking) as the applicable section of the Minnesota Statutes (MS) as the criminal activity investigated or prosecuted. At Part 3.5, the certifying official described the criminal activity being investigated and/or prosecuted and the petitioner's involvement as: "on four separate occasions, two reported, [the petitioner] was followed, questioned and bothered by the criminal while driving to and from work. The criminal pulled his vehicle next to the [the petitioner's] and rolled down his window and asked her a variety of random questions and continued to bother [the petitioner]. The criminal purposely looks for [the petitioner] and mentally terrorizes [the petitioner]. The criminal has a criminal history of stalking women." At Part 3.6, the certifying official described the known or documented injury to the petitioner as being "[The petitioner's] mother, [M-B-²] shares the same vehicle as her daughter. Around Christmas 2009, [M-B-] took the car to the Eagen Cub Foods on Cliff Road. When [M-B-] arrived back to her vehicle she noticed that the garage door opener was missing. [M-B-] suspects that someone took it while she was inside of Cub Foods being that they do not lock their vehicle. [The petitioner] is now terrified that the criminal may have taken the garage door opener and will follow her from work to her home. [The petitioner] is fearful that the criminal may know where she lives due to the variety of times he has followed her." At Part 4, the certifying official also stated "[The petitioner] fears for her safety and has been forced to change her routine in case the criminal

¹ Part 2 of the Form I-918 Supplement B is incomplete and does not list the name of the certifying agency or the head of the certifying agency; however, the police report attached to the law enforcement certificate indicates that the incident was investigated by the Bloomington, Minnesota Police Department.

² Name withheld to protect individual's identity.

continues to harass her. [The petitioner] is frightened that he will find her again and that the criminal may try to harm her in the future.”

The attached police report stated: the petitioner thought that she was being followed by an unknown older male and that her first contact with him was around mid-November 2009, an incident which she did not report to the police; the petitioner always takes the same route to work and that a male attempted to gain her attention by waving both of his hands at her as he sat in his vehicle; the petitioner did not recognize the male so she did not stop; the male pulled up to her while she was stopped at a red light and asked her whether there were any good apartments in the area to which she responded that she did not know; the male then asked her if there was a Sam’s Club in the area and she directed him down the street; when the petitioner pulled up to the front entrance of her work the male again pulled up to her and requested that she get out of her car to which she responded in the negative; the male then drove off before the petitioner could get his license plate number; on February 4, 2010, the petitioner reported that she again saw the same male and vehicle parked next to her at her work and she locked her doors and windows; the male asked the petitioner if there was a Holiday Gas station in the area; the petitioner wrote down the male’s license plate number and the male quickly left the area; the petitioner then ran very fast into her work and called the police; the petitioner reported that her mother, M-B-, used the vehicle which they share about Christmas 2009 to go to the Eagen Cub Foods; upon returning home M-B- realized that the garage door opener was missing and suspected that someone took it while she was inside Cub Foods; the petitioner feared that the male may have taken the garage door opener and knows where she lives. The police report indicated that other victims had reported similar incidents in regard to the same male and that the perpetrator was identified as D-W-³, against whom charges of gross misdemeanor stalking were filed.

An Order on Petition for Harassment Restraining Order indicates that the petitioner obtained a protective order against D-W- on February 9, 2010.

A Register of Actions indicates that D-W- was charged with and found guilty of misdemeanor harassment-stalk/follow/pursue in violation of MS § 609.749.2(a)(2). D-W- was sentenced to 90 days in jail and one year probation.

The Crime of Stalking is Not Substantially Similar to the Crimes of Domestic Violence

On appeal, counsel contends that the criminal activity against the petitioner is substantially similar to domestic violence.⁴ Counsel contends that the offense of “stalking” is included in the offense of domestic assault and child abuse and often leads to physical harm in addition to mental abuse,

³ Name withheld to protect individual’s identity.

⁴ Counsel also contends that stalking is a crime involving moral turpitude, a crime which has the potential for being a crime of violence, a crime which is sufficient to deserve removal from the United States and a crime which prohibits the issuance of visas under section 214(r)(5)(A) of the Act, which should render the crime a qualifying crime because of the severity of harm associated with the offense; however, these contentions are not relevant to this case because the Act requires that the crime investigated be substantially similar to one of the enumerated crimes at section 101(a)(15)(U)(iii) of the Act.

which is similar to domestic violence. Counsel contends that the only difference between domestic violence and stalking is that the victim does not always know the perpetrator and the language of Minnesota's stalking statute is quite similar in substance to Minnesota's domestic assault statute.

As in effect at the time the offense against the petitioner was committed, Minnesota law defined Harassment and Stalking crimes as:

Subdivision 2. Harassment and Stalking crimes. (a) A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor:

....

(2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means[.]

Minn. Stat. Ann. § 609.749.2(a)(2) (West 2008)

Minnesota law defines Domestic Assault as:

Subdivision 1. Misdemeanor.

Whoever does any of the following against a family or household member as defined in section 518B.01, subdivision 4, commits an assault and is guilty of a misdemeanor:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another.

Minn. Stat. Ann. § 609.2242 (West 2011)

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). The nature and elements of stalking are not substantially similar to those of domestic assault under the Minnesota statutes. The stalking statute at MS § 609.749.2 has no element of the actual or threatened infliction of bodily harm, which is an essential element of domestic assault under MS § 609.2242. The crime of stalking also lacks the requisite element in the domestic assault statute that the victim be "a family or household member." Accordingly, the crime of stalking under MS § 609.749.2 is not similar to the qualifying crime of domestic violence because the nature and elements of stalking are not substantially similar to the nature and elements of domestic assault, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

In addition, the record lacks any evidence that the certifying agency ever investigated or prosecuted the offense as domestic assault or any other domestic violence offense. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of stalking

under MS § 609.749.2. The certifying official also provided clarifying evidence in the police report accompanying the Form I-918 Supplement B. These documents establish that the certifying agency investigated only charges of stalking under MS § 609.749.2(a)(2). Accordingly, the certifying agency never investigated or prosecuted the perpetrator for domestic violence and the record contains no evidence that the certifying agency intends to investigate or prosecute D-W- in the future for such a crime.

In this case, the relevant evidence shows that stalking was the only crime that the certifying agency investigated or prosecuted and of which it considered the petitioner to be a victim. Because counsel has failed to demonstrate that the nature and elements of stalking under MS § 609.749.2 are substantially similar to those of domestic violence, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act, the petitioner has not demonstrated that she was the victim of a qualifying crime, as required for U nonimmigrant classification.

Remaining Eligibility Criteria

The record does show that the petitioner was helpful to the certifying agency in its investigation of D-W- and that she possessed some information about D-W-'s harassment and stalking. While the petitioner's assistance to the certifying agency may have been valuable and was laudable, her own qualifying victimization has not been established. Being a victim of qualifying criminal activity is a threshold requirement for the remaining 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

As set forth above, the petitioner has failed to establish that she was the victim of qualifying criminal activity or that she meets any of the eligibility requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act, and her petition must remain denied.

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.