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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 26 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 of the Vermont Service Center (“the director”) denied the U nonimmigrant visa petition (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)(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[.]

For an offense to constitute a “similar activity” to a qualifying crime under section 101(a)(15)(U)(iii) of the Act, the nature and elements of the 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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918

Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4).¹ All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in June 1991 without being inspected, admitted or paroled by an immigration officer. The petitioner filed the instant Form I-918 U petition on May 15, 2008, and the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence that the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner was the victim of qualifying criminal activity and had suffered substantial physical or mental abuse as a result of the criminal activity. The petitioner timely appealed. On appeal, counsel submits a brief that only addresses the substantial abuse eligibility criterion.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We affirm the director's determination that the petitioner has not established her eligibility for U nonimmigrant status because she was not the victim of qualifying criminal activity.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted is signed by a Sergeant with the Los Angeles, California Police Department (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as grand theft, and provides the statutory citation for the criminal activity investigated or prosecuted at Part 3.2 as "Grand Theft 487 [of the California Penal Code (CPC)]."² Under CPC § 487(a) grand theft is committed "when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)." Under CPC § 487(c) grand theft is committed "when the property is taken from the person of another." Cal. Penal Code Ann. § 487(a), (c) (West 2011). At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official indicated that the perpetrator falsely represented herself as an immigration attorney and that the petitioner believed she was being represented by a licensed attorney while the petitioner was paying the perpetrator for her services. The certifying official did not complete Part 3.6, which asks for a description of any known or documented injury to the petitioner.

The crime of grand theft is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the

¹ As explained in the preamble to the U nonimmigrant visa interim rule: "While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule." 72 Fed. Reg. 53014, 53024 (Sept. 17, 2007).

² The certifying official did not provide the subsection of CPC 487 that constituted the criminal activity.

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 does not address the director’s findings that the crime of grand theft is neither listed at section 101(a)(15)(U)(iii) of the Act nor substantially similar to one of the statutorily enumerated crimes. Although counsel stated in response to the director’s RFE that grand theft “should be considered a crime that is ‘similar to’ the listed crimes,” counsel provided no statutory analysis to show that the nature and elements of grand theft under CPC § 487 are substantially similar to those of any of the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act. Consequently, the petitioner cannot meet her burden of establishing that she was the victim of qualifying criminal activity.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as defined at subsection 101(a)(15)(U)(iii) of the Act, and as required by subsection 101(a)(15)(U)(i)(I) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status, including the requirement of having suffered substantial physical or mental abuse as the result of such victimization. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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.