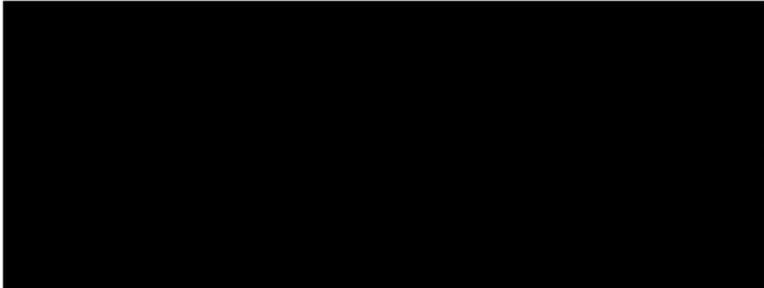


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



814

Date: **AUG 15 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director), 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)(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 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 who claims to have entered the United States without inspection, admission or parole on August 20, 2008. On March 5, 2010, the petitioner filed the instant Form I-918 U petition. On June 18, 2010 and February 1, 2011, the director issued Requests for Evidence (RFEs) to which the petitioner, through counsel, submitted timely responses. On November 16, 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 Assistant U.S. Attorney Patrick T. Barry (certifying official) of the Arizona U.S. Attorney's Office on August 27, 2010. At Part 3.1, the certifying official indicated that the petitioner was the victim of trafficking. At Part 3.3, the certifying official cited 8 U.S. Code (U.S.C.) section 1324 (alien smuggling, alien transportation and harboring of aliens) as the criminal activity investigated or prosecuted. At Part 3.5, the certifying official described the criminal activity and the petitioner's involvement as: "alien smuggling-[the petitioner] was one of those being smuggled." At Part 3.6, the certifying official stated that there was no known or documented injury to the petitioner. At Part 4, the certifying official described the petitioner's helpfulness as: "Provided a statement identifying each defendant and was prepared to testify if called."

A letter, dated March 20, 2009, from [REDACTED] District of Arizona, indicates that the petitioner did not give a deposition in the case because the defendants signed stipulations to release the material witnesses against them. The attachment *Stipulation and Joint Motion for Release of Material Witnesses*, indicates that the petitioner's testimony to arresting agents would be admitted as substantive evidence in any hearings or trial against the defendants.

A criminal complaint filed in the U.S. District Court of Arizona on August 25, 2008, indicates that the petitioner was among seventeen illegal aliens located in conjunction with illegal alien smuggling activities. It states that the petitioner is one of three material witnesses identifying one or more of the defendants as participants in the illegal alien smuggling operation and provided testimony which identified the driver, navigator and another person who gave instructions to the aliens at the stash house.

An *Affidavit for Detention of Material Witnesses*, filed in the U.S. District Court of Arizona, indicates that the petitioner is a material witness in a criminal complaint charging the defendants with knowingly conspiring to harbor and transport aliens.

According to the petitioner's January 19, 2010 statement, she was walked across the border for eight hours after she paid smugglers to get her back into the United States. She stated that she was taken to a house in Arizona where she was sexually taunted by the men, who attempted to persuade her into sexual acts. She stated that she and other women in the house were forced to cook for the men and other people. She stated that after a day and a half at the house the smugglers were arrested in the process of transporting her and some other aliens. She stated that the smugglers threatened her and her family if she cooperated with the authorities. She stated that, even though she was afraid, she identified a smuggler and provided information about the smuggling ring to authorities.

Analysis

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).

On appeal, counsel claims that the petitioner was the victim of the qualifying criminal activity of rape, torture and sexual assault. Although the crimes of rape, torture and sexual assault are listed at section 101(a)(15)(U)(iii) of the Act as qualifying crimes the certifying official did not indicate on the Form I-918 Supplement B that the petitioner was a victim of these crimes, and the petitioner also did not testify that she was raped, tortured or sexually assaulted. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of trafficking; however, the certifying official stated at Part 3.3 that the only crime investigated or prosecuted was alien smuggling/transportation/harboring under 8 U.S.C. § 1324, which is not qualifying criminal activity.

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 petitioner is by definition a victim of trafficking and that trafficking could be defined as the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. However, counsel fails to engage in the requisite statutory analysis to demonstrate that 8 U.S.C. § 1324 is substantially similar to an enumerated crime at section 101(a)(15)(U)(iii) of the Act. 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 alien smuggling and that she possessed some information about the smuggling operation. However, counsel has failed to demonstrate that alien smuggling under 8 U.S.C. § 1324 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.