

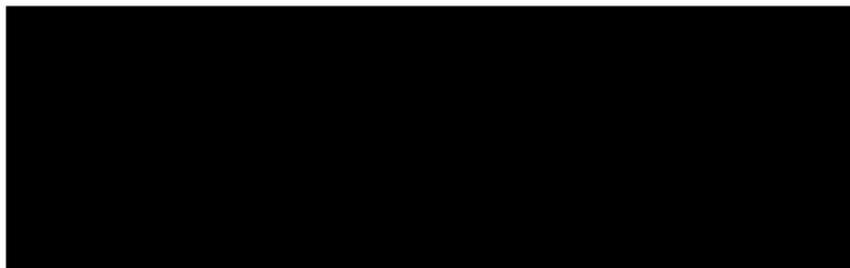
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



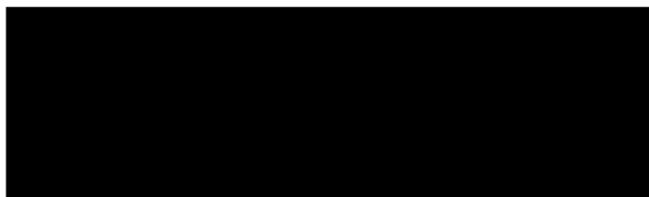
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Date: **AUG 15 2012** Office: VERMONT SERVICE CENTER FILE:

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) 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 because the petitioner had failed to establish that she was the victim of the qualifying criminal activity of extortion and did not establish that her sexual assault occurred in the United States or violated U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense.

*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[.]

....

(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 eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

\* \* \*

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 petitioner is a native and citizen of Colombia who claims to have last entered the United States without inspection, admission or parole on September 14, 2009. On October 4, 2010, the petitioner filed the Form I-918 U petition. On February 17, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. The director found the evidence insufficient to establish that the petitioner was the victim of the qualifying crime of extortion. The director also found the evidence insufficient to establish that the petitioner's sexual assault had occurred in the United States or that the United States had jurisdiction over the criminal activity occurring in Mexico. Accordingly, the director denied the Form I-918 U petition. The petitioner filed a timely appeal of the denial of the Form I-918 U petition.

#### *The Claimed Criminal Activity*

The petitioner claimed in her first, undated, declaration submitted in support of her Form I-918 U petition that after she had been detained by immigration, her family hired an attorney named M-J-H-<sup>1</sup> who told them she was working with immigration and the Colombian Consulate. The petitioner stated that M-J-H- visited her in detention and showed her credentials that appeared to be legitimate. The petitioner stated that M-J-H- charged the petitioner's husband \$4,000 for handling the petitioner's case

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<sup>1</sup> Name withheld to protect individual.

and claimed that she could get the petitioner released from detention in a few days because she worked with immigration; however, the petitioner was deported from the United States shortly thereafter. The petitioner stated that she cooperated with the Federal Bureau of Investigation (FBI) in investigating M-J-H-'s activities. The petitioner stated that her husband hired someone to smuggle her into the United States from Mexico. The petitioner stated that the person who contacted her in Mexico kidnapped, raped her and then left her in McAllen, Texas. The petitioner stated that this activity occurred between September 13, 2009 and September 14, 2009 and that immigration detained her and took her to a hospital where she was examined. The petitioner stated that she gave testimony to immigration officers and filed a police report.

The first Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B) that the petitioner submitted into the record was signed by [REDACTED] Texas Sheriff's Office. At Part 3.1, the certifying official indicated that the petitioner was the victim of extortion. At Part 3.3, the certifying official gave no citation of law violated but indicated that the crime investigated was third degree felony aggregate theft of over \$20,000. Section 31.03 of the Texas Penal Code (TPC) provides, in pertinent part:

§ 31.03. THEFT. (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

- (1) it is without the owner's effective consent;
- (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or
- (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

....

(e) Except as provided by Subsection (f), an offense under this section is:

....

(5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000

....

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

- (1) the actor was a public servant at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant. . .

(West 2012)

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as

aggregate theft, third degree felony over \$20,000. At Part 3.6, the certifying official described the known or documented injury to the petitioner as loss of money. In Part 4.5, the certifying official indicated that a copy of the report could be obtained by contacting records. The certifying official also noted that, on August 31, 2009, the petitioner's husband made a statement that the petitioner had been sexually assaulted by captors/coyotes.

In response to the director's RFE, the petitioner submitted a second Form I-918 Supplement B which was signed by [REDACTED] Texas Sheriff's Office. At Part 3.1, the [REDACTED] indicated that the petitioner was the victim of rape and sexual assault. At Part 3.3, the [REDACTED] official cited TPC § 22.021 (aggravated sexual assault) as the criminal activity. At Part 3.4, the [REDACTED] certifying official stated that the criminal activity occurred on the banks of the Rio Grande River in [REDACTED] Texas/unknown location. At Part 3.5, the [REDACTED] official described the criminal activity being investigated or prosecuted as:

While the [petitioner] was being crossed into the United States through the Rio Grande River she was sexually assaulted by the guide that brought her into the United States. The guide placed a gun to her and sexually assaulted her. The [petitioner] could not provide the exact location of the offense only that it was in the area of [REDACTED] Texas.

At Part 3.6, the [REDACTED] certifying official referred to the preliminary offense report to describe the known or documented injury to the petitioner. In Part 4.5, the [REDACTED] certifying official indicated that a copy of the report could be obtained by contacting records. The [REDACTED] certifying official also noted that the petitioner "was sexually assaulted and the suspect to this offense was never identified. The [petitioner] made an outcry and a preliminary offense report was obtained. The [petitioner's] statement was never obtained due to [petitioner] being transferred to an unknown federal immigration facility."

On appeal, the petitioner submitted another declaration, undated, reiterating the same statements made in her previous declaration and noting that the sexual abuse occurred in [REDACTED] Texas. The petitioner indicated she had been hit and treated poorly and that she had submitted medical documentation and other evidence in regard to her assault.

#### *Theft Offense is Not a Qualifying Crime*

On appeal, counsel contends that the petitioner was the victim of extortion because M-J-H-, a former employee of the Colombian Consulate, obtained \$4,000 from the petitioner's husband for her services while claiming to be an attorney working with immigration and the Colombian Consulate.

Although the crime of extortion is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of that crime, he failed to provide any statements describing the criminal activity and the petitioner's involvement in, victimization and injury from, such criminal activity. The record does not

contain supporting documentation from the certifying agency that describes the criminal activity and the petitioner's involvement in, victimization and injury from, the criminal activity. Without such information from the certifying agency, the Form I-918 Supplement B is deficient and fails to demonstrate that the petitioner was the victim of qualifying criminal activity.

*Qualifying Criminal Activity in Violation of a U.S. Law providing for Extraterritorial Jurisdiction*

Evidence in the record does not provide a consistent account of the petitioner's allegations of being sexually assaulted in the United States.

According to the Form I-918 Supplement B from the [REDACTED] official, the petitioner was sexually assaulted in [REDACTED] Texas on October 6, 2009. However, in her declaration submitted in support of the Form I-918 U petition, the petitioner stated that the sexual assault occurred sometime between September 13 and 14, 2009 and she did not provide the location of the assault, only stating that after it occurred she was left in McAllen, Texas. Furthermore, on October 9, 2009, the date that the Hidalgo County certifying official indicated as the date of the sexual assault, the petitioner was being detained and, therefore, could not have been sexually assaulted as the [REDACTED] County certifying official claimed. Further confusing the record is information on the Form I-918 Supplement B from the Harris County certifying official, which relates to the extortion claim. According to the Harris County certifying official, the petitioner's husband reported to him on August 31, 2009 that the petitioner "was sexually assaulted by captors/coyotes." The petitioner's husband's date of the sexual assault is contradicted by both the petitioner and the [REDACTED] certifying official's testimony.

More importantly, the record contains contradictory evidence regarding the location of the alleged assault. While the petitioner stated in her declaration in support of the Form I-918 U petition that she was assaulted in [REDACTED], Texas, her statements to Department of Homeland Security (DHS) officials belie the testimony she has provided in support of her Form I-918 U petition. When she was apprehended on or about September 15, 2009, she testified to a DHS official that she had been sexually assaulted in Reynosa, Tamaulipas, Mexico. According to her *Declaration of Sworn Statement* that was taken during her reasonable fear interview, when asked if she had ever been tortured by anyone, the petitioner testified "yes, when they raped me in Mexico."<sup>2</sup> In an undated letter that the petitioner wrote to request that she not be removed from the United States, she testified: "While traveling in Mexico I was kidnapped for 10 days, I was incommunicated [sic] so my husband though[t] I was dead, this people send me to another house w[h]ere they rape me, abused me mentally[.]" Without a consistent and credible account of the alleged sexual assault, the petitioner cannot demonstrate that she is the victim of qualifying criminal activity that occurred in the United States or violated U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense.

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<sup>2</sup> The petitioner signed her sworn declaration on October 26, 2009, attesting to the accuracy of its contents.

*Conclusion*

The petitioner has failed to demonstrate that she was the victim of extortion or a crime similar qualifying criminal activity, or that she is the victim of qualifying criminal activity that occurred in the United States or violated U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. 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. The petition remains denied.