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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: **FEB 10 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:

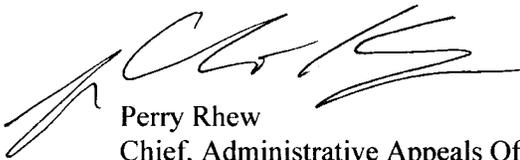


**INSTRUCTIONS:**

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 (“the director”), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The previous order dismissing the appeal will be affirmed, and 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.

### *Factual and Procedural History*

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity. On appeal, counsel maintained that felony theft under Louisiana law was a criminal offense similar to wire or mail fraud under Title 8 of the U.S. Code (U.S.C.) § 1341 and as such, the crime of which the petitioner was a victim was similar to blackmail, extortion, obstruction of justice, perjury, or the attempt to commit those crimes. Counsel also asserted that the petitioner’s victimization should be considered in light of the aftermath of Hurricane Katrina, during which time con men were everywhere and crime was rampant.

In our prior decision, we compared the crime of theft under the Louisiana Revised Statutes (LRS) to the crimes of blackmail, extortion, obstruction of justice and perjury, and found that theft was not substantially similar to any of those qualifying crimes. We also noted that counsel failed to explain how wire or mail fraud under 8 U.S.C. § 1341 was relevant to the proceeding. Accordingly, we dismissed the petitioner’s appeal for failing to establish that she was the victim of a qualifying crime.

On motion, counsel states that the denial was erroneous because the petitioner was the victim of a malicious scheme that took advantage of her vulnerability as a foreign-born woman and defrauded her out of money. Counsel states that the petitioner’s victimization was not the “garden variety” theft case and that Congress intended to protect victims like the petitioner when it enacted “The Trafficking and Victim Protection Act of 2000 (TVPA).”<sup>1</sup> Counsel maintains further that the nature and elements of LRS § 14:67 (theft) and LRS § 14:66 (extortion) are substantially similar because “both statutes involve a requisite intent to obtain something of value.” According to counsel,

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<sup>1</sup> Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). See Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106–386, sec. 1513, 114 Stat. 1464, 1533–37 (2000), amended by Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), tit. VIII, Pub. L. 109–162, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109–271, 120 Stat. 750 (2006).

although both statutes are not identical, they share one out of two elements that “creat[es] an overlap between the statutes of 50%.” Counsel asserts that this fifty percent commonality between the two statutes makes them substantially similar. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel’s statements on motion fail to overcome our prior determination that the petitioner was not the victim of qualifying criminal activity.

### *Analysis*

As noted in our prior decision, the record indicated that the perpetrator of the theft against the petitioner was paid to renovate the petitioner’s home after it was damaged during Hurricane Katrina, but he failed to satisfactorily complete the repairs and renovations. The perpetrator was subsequently prosecuted for theft under LRS § 14:67, which provides:

A. Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

(West 2012)

Theft is not listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(U)(iii). The petitioner must therefore establish that theft is a similar activity to one of the enumerated crimes. The term “any similar activity” at section 101(a)(15)(U)(iii) of the Act refers to 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).

Counsel states on motion that theft is substantially similar to extortion under Louisiana law because they share one element in common and consequently “overlap” by fifty percent. Counsel’s analysis of the two statutes is, however, flawed. Extortion under LRS § 14:66 “is the communication of threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description.” La. Rev. Stat. Ann. § 14:66 (West 2012). While both statutes contain language regarding a perpetrator’s intent to obtain anything of value, extortion under Louisiana law must contain a threat component and is not limited to a misappropriated item, as it also may include an intent to obtain an “acquittance, advantage or immunity of any description.” As stated in our prior decision, theft under Louisiana law does not contain a threat component, only an intent to permanently deprive a victim of a misappropriated item. Thus, the nature and elements of theft under LRS § 14:67 are not substantially similar to extortion under LRS § 14:66.

Counsel’s remaining assertions regarding the petitioner’s vulnerability as a foreign-born woman are not relevant to a claim that the AAO misapplied the law or U.S. Citizenship and Immigration

Services (USCIS) policy when dismissing the appeal.<sup>2</sup> Congress created the U nonimmigrant classification with the intent to strengthen the ability of law enforcement agencies to investigate and prosecute cases involving criminal activity listed at section 101(a)(15)(U)(iii) of the Act or similar activity, while offering protection to victims of such crimes.<sup>3</sup> Although she was the victim of a theft crime, the petitioner was not the victim of a qualifying crime or any activity similar to a crime listed at section 101(a)(15)(U)(iii) of the Act. Accordingly she is not eligible for U nonimmigrant status.

### *Conclusion*

The petitioner has not met her burden of showing that she was the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. *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. Accordingly, the appeal will remain dismissed.

**ORDER:** The AAO's prior decision, dated August 9, 2011, is affirmed. The appeal remains dismissed, and the petition remains denied.

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<sup>2</sup>A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

<sup>3</sup> *See Preamble to the U Nonimmigrant Visa Interim Rule*, 72 Fed. Reg. 179, 53014 - 42, 53025 (Sept. 17, 2007).