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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: **FEB 13 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 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.

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[.]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). 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 filed the instant Form I-918 U petition on April 2, 2009. On January 21, 2010, the director issued a Request for Evidence (RFE) to which the petitioner through former counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition because the law enforcement certification (Form I-918 Supplement B) was neither complete nor properly executed and, thus, the petitioner was unable to establish that she was the victim of qualifying criminal activity and met any of the statutory eligibility criteria. The petitioner's former counsel timely appealed on the petitioner's behalf.¹

Analysis

We concur with the director that the Form I-918 Supplement was incomplete and additionally find, beyond the director's decision, that the petitioner has failed to demonstrate that she was the victim of qualifying criminal activity.

The Form I-918 Supplement B that the petitioner submitted is signed by the [REDACTED] (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence and harassment. The certifying official indicated at Part 3.2 that the criminal activity occurred on January [REDACTED], but did not provide the statutory citation for the crime at Part 3.3. At Parts 3.5 and 3.6 where the certifying official describes the criminal activity and any documented or known injuries to the victim, the certifying official wrote "see report." Attached was a police report, dated January 2, 2008.

According to the report, the county public health department called the police department to advise it of "something they needed to be made aware of." The report's author interviewed the petitioner in response to the public health department's request and noted that the petitioner stated that she was involved in a paternity dispute with her former husband, and he was calling the petitioner on her cellular phone and harassing her. In a separate section of the report, dated January 3, 2008, the report's author noted that he contacted the petitioner's former husband and advised him to not have any contact

¹ The appellate submission consisted of: a brief; a copy of a "Power and Control Wheel" relating to abusive relationships; and copies of evidence already included in the record.

with the petitioner or he would be charged with harassment. The report's author also advised the petitioner's former husband that the Polk County, Iowa Sheriff's Office was attempting to serve a "No Contact Order" on him.

Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of domestic violence, the accompanying police report, which describes the January 2, 2008 criminal activity that was certified, only indicates that the crime of harassment was investigated. The "No Contact Order" referenced by the report's author is the petitioner's *Petition for Relief from Domestic Abuse* that she filed on January [REDACTED]. In this *Petition*, the petitioner mentioned several incidents of alleged domestic abuse, but did not mention the January 2, 2008 incident that was the subject of the law enforcement certification.

Former counsel claimed that when viewed in its totality, the evidence established that the petitioner was a domestic violence victim, and cited the petitioner's successful obtainment of an Order of Protection in February 2008 based upon her January [REDACTED] *Petition*. Former counsel failed to acknowledge, however, that petitioners for U nonimmigrant classification must demonstrate their helpfulness to the certifying agency in the investigation or prosecution of the qualifying criminal activity of which they were victims and upon which their petitions are based. 8 C.F.R. § 214.14(b)(3). In this case, the Order of Protection and the events described within are separate from the criminal activity that the certifying official investigated, which was harassment by the petitioner's former husband. There is no evidence that the certifying official investigated the incidents of abuse in the *Petition* or any other incidents of domestic violence. Accordingly, the Form I-918 Supplement B does not demonstrate that the certifying official investigated an incident of domestic violence against the petitioner. Accordingly, the only certified crime is harassment under [REDACTED] Code Annotated (ICA) § 708.7.³

[REDACTED] District Court for Greene County, Civil No. DACV020462.

³ Under ICA § 708.7(West 2012):

- (a) A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:
 - (1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
 - (2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.
 - (3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.
 - (4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.
- (b) A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person. As used in this section, unless the context otherwise requires, "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other. "Personal contact" does not require a physical touching or oral communication, although it may include these types of contacts.

The crime of harassment 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 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).

Former counsel does not provide the requisite statutory analysis to demonstrate that the nature and elements of harassment under ICA § 708.7 are substantially similar to domestic abuse as that term is defined at ICA § 236.2, or any other qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Under Iowa law “domestic abuse” occurs with the commission of an assault by a perpetrator against a victim with whom he has a specified familial relationship.⁴ While harassment under Iowa law requires “physical contact,” that term is defined as “an encounter in which two or more people are in visual or physical proximity to each other,” and does not require physical touching between the perpetrator and the victim. The perpetrator and the victim are also not required to have a familial relationship as described at ICA § 236.2.2 *See* ICA § 708.7(b).

Conclusion

Although the petitioner has demonstrated that she was the victim of harassment, she has not established that the nature and elements of that crime are substantially similar to domestic violence

⁴ Under I.C.A. § 236.2.2 (West 2012):
“Domestic abuse” means committing assault . . . under any of the following circumstances:

- a. The assault is between family or household members who resided together at the time of the assault.
- b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.
- c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.
- d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.
- e. (1) The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:
 - (a) The duration of the relationship.
 - (b) The frequency of interaction.
 - (c) Whether the relationship has been terminated.
 - (d) The nature of the relationship, characterized by either party's expectation of sexual or romantic involvement.



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or any other crime enumerated at section 101(a)(15)(U)(iii) of the Act. Her failure to establish that she was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

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.