

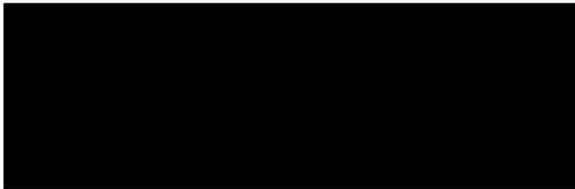
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



814

Date: JAN 11 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:

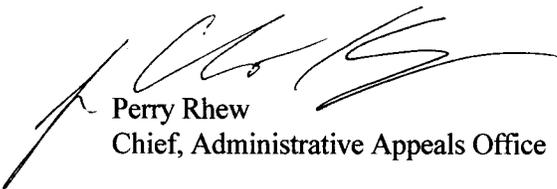


INSTRUCTIONS:

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 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)(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)(i) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 214(p) of the Act, 8 U.S.C. § 1184(p), provides that a petition for U nonimmigrant classification must contain a law enforcement certification (LEC) attesting to the petitioner’s helpfulness in the investigation or prosecution of qualifying criminal activity. Petitioners 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). A petitioner who received interim relief is not required to submit initial evidence with a Form I-918 U petition if he or she wishes to rely on the LEC and other evidence that was submitted with the request for interim relief. 8 C.F.R. § 214.14(c)(1). The term *victim of qualifying criminal activity* is defined at 8 C.F.R. § 214.14(a)(14) and states, in pertinent part:

- (i) [I]f the direct victim is under 21 years of age, parents . . . will be considered victims of qualifying criminal activity where the direct victim . . . is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

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 USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the LEC. 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 Argentina who was admitted to the United States in April 2000 as the spouse of a religious worker. She was accompanied by her three children, a son and two daughters, to join her husband in the United States. Pending the publication of regulations implementing the U classification, the petitioner filed a request for U nonimmigrant status and interim relief, and USCIS granted the petitioner interim relief as of January 30, 2007. With the interim relief

[REDACTED]

filing, the petitioner submitted an LEC from a criminal investigator in the Pittsylvania County, Virginia Sheriff's Office, dated April 18, 2006. The investigator indicated that the criminal activity involved forcible sodomy and indecent liberties with children in violation of §§ 18.2-67.1 and 18.2-370 of the Virginia State Code. The investigator listed the dates and places of the criminal activity as April 30, 2003 and March 10, 2005 in Cook County, Illinois; and April 1-17, 2005 in Pittsylvania County, Virginia. In the narrative part of the form, the investigator stated that he was assisting the Cook County, Illinois Sheriff's Office in locating the petitioner's husband for a sodomy investigation that concerned "two sex violations in Illinois involving young male victims and other possible violations in Virginia." The investigator indicated that the petitioner had been helpful in the investigation but that it was inactive until additional leads could be developed.

The petitioner filed the instant Form I-918 U petition on February 15, 2008. On December 14, 2009, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded. In denying the petition, the director noted that the LEC did not list the petitioner or her children as victims of any criminal activity. On appeal, counsel argues that the investigator's reference to "other possible violations in Virginia" in the LEC relates to the petitioner's children, when the totality of the evidence is viewed in its most favorable light. Counsel submits a letter from the Pittsylvania County, Virginia Sheriff's Office as evidence that the investigator who submitted the LEC has since retired and, therefore, the petitioner is unable to provide any additional evidence from law enforcement authorities.

Analysis

The statement by the investigator on the LEC relating to "other possible violations in Virginia" does not demonstrate that law enforcement authorities detected or investigated any claims of sexual abuse by the petitioner's husband against their children. According to the LEC, the criminal acts in Pittsylvania County, Virginia involving the petitioner's husband took place from April 1 – April 17, 2005; however, the investigator did not provide any further, clarifying information regarding the criminal activity that took place during the noted time period. The investigator also did not name any of the petitioner's children as possible victims. Although she had an established relationship with the investigator in Pittsylvania County, Virginia at the time she learned of her children's abuse in approximately October 2005, the petitioner does not indicate that she informed him, any other law enforcement entity, or other state authorities of this information. To the contrary, in her December 13, 2010 statement, the petitioner stated that she was victimized by church elders who, knowing of her husband's actions towards her children and others, never reported her husband to state authorities. In addition, in her psychological evaluation of the petitioner's youngest child that was written in January 2011, [REDACTED] noted that during her interview of the petitioner, which was done as part of the petitioner's child's psychological evaluation, the petitioner only told her that she had reported the abuse of her children to the church; [REDACTED] does not mention the petitioner reporting her children's sexual abuse to any state or local authorities.¹

[REDACTED] notes further in the evaluation that she reported the abuse of the petitioner's youngest child to the State of Illinois, Department of Children and Family Services (DCFS) and was told that no prior reports had been made by the church, the police, or any mental health professional. She did not indicate whether she

Similarly, the evidence submitted by the petitioner regarding her nephew's U nonimmigrant petition filing does not demonstrate that law enforcement authorities detected, investigated, or prosecuted a claim of sexual abuse by her husband against their own children. None of the documents from the certifying agency in the petitioner's nephew's case name the petitioner or her children; or make any reference to the petitioner's husband's sexual abuse of their children.

We recognize the difficulties that a petitioner may face in obtaining evidence of qualifying criminal activity from law enforcement authorities; however, while the LEC that the petitioner has submitted indicates that her husband was investigated for sexually abusing children, it does not establish her own children's victimization or her helpfulness to the certifying agency in the detection, investigation or prosecution of qualifying criminal activity of which she herself was the indirect victim, as required by section 101(a)(15)(U)(i)(III) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(b)(3). Accordingly, the petitioner does not meet the definition of a victim of qualifying criminal activity at 8 C.F.R. § 214.14(a)(14)(i), and she is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

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.