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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

**PUBLIC COPY**



814

Date:

**JAN 18 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 [REDACTED]. 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, denied the U nonimmigrant visa petition and 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 (ii);

(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;

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(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.

\* \* \*

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

\* \* \*

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 (law enforcement 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 was paroled into the United States on August 2, 2010 as a material witness. The petitioner filed the instant Form I-918 U petition on August 4, 2010. The director found the petitioner ineligible for U nonimmigrant status because she failed to establish that she suffered substantial physical or mental abuse as a result of qualifying criminal activity, and determined further that because the petitioner did not suffer substantial physical or mental abuse, she also could not establish the remaining eligibility criteria at subsections 101(a)(15)(U)(i)(II)-(IV) of the Act.<sup>1</sup> On appeal, the petitioner through counsel submits a psychological evaluation, dated February 23, 2011.

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<sup>1</sup> The director also found the petitioner ineligible for U nonimmigrant classification because she is inadmissible to the United States and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We affirm the director's ultimate determination that the petitioner has not established her eligibility for U nonimmigrant status; however, we withdraw the director's implicit finding that the petitioner was the victim of qualifying criminal activity, namely witness tampering and/or obstruction of justice.<sup>2</sup>

### *Criminal Activity*

As stated earlier in this decision, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a law enforcement certification (LEC). 8 C.F.R. § 214.14(c)(4). In this matter, the record contains two LECs, dated July 29, 2010 and November 4, 2010, respectively, both of which were signed by [REDACTED] an Assistant U.S. Attorney for the Southern District of Texas (certifying official).

Both LECs identified the criminal activity at Part 3.1 as obstruction of justice, witness tampering, wire fraud, violent threats, and conspiracy to commit those crimes. In the July 29, 2010 LEC, the certifying official provided the statutory citations for the criminal activity at Part 3.3 as sections 1343 (wire fraud) and 1349 (conspiracy) of Title 18 of the U.S. Code (USC). The certifying official also wrote at Part 3.3: "There may be threats against the witness as a result of her cooperation in this case." According to the certifying official at Parts 3.5 and 3.6 of the LEC, the petitioner and her husband were defrauded out of five million dollars by a fugitive from justice, and the fugitive's co-conspirators are intimidating witnesses and another individual who was defrauded by the fugitive may have disappeared in Mexico.

The certifying official's November 4, 2010 LEC contained the same information as the July 29, 2010 LEC at Parts 3.1, 3.5 and 3.6. At Part 3.3 where the certifying official provides the statutory citation for the criminal activity, the certifying official added 18 U.S.C. §§ 1512 (witness tampering) and 1513 (retaliation against a witness) to the list of statutory citations indicated on the July 29, 2010 LEC. However, Part 3.3 did not contain the certifying official's statement: "There may be threats against the witness as a result of her cooperation in this case."

The evidence of record, including information in the two LECs, fails to demonstrate that the petitioner was the victim of witness tampering or obstruction of justice. The certifying official's statement in his July 29, 2010 LEC regarding threats against the petitioner was speculative; he indicated only that "there may be threats" as a result of the petitioner's cooperation, not that any threats had occurred. The certifying official also did not mention the petitioner by name at Part 3.5 when referring to the

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

intimidation of witnesses by the fugitive's co-conspirators. Although the certifying official added the federal statutory citations for witness tampering (18 U.S.C. § 1512) and retaliation against a witness (18 U.S.C. § 1513) to the November 4, 2010 LEC, he did not state that the petitioner was a victim of such criminal activity.

In addition, in a July 29, 2010 letter written to officials of the Departments of State and Homeland Security to facilitate the petitioner's parole into the United States as a material witness, the certifying official indicated: "The criminal conduct involves the loss of tens of millions of dollars." He did not mention the petitioner's victimization from witness tampering, obstruction of justice, or any other qualifying crime. While the certifying official did request that the petitioner be able to remain in the United States after her testimony for her safety, this statement does not establish that the petitioner had already been victimized as a result of witness tampering or obstruction of justice. To the contrary, the petitioner's own declaration, dated October 27, 2010, contains no statement that she was threatened, intimidated or harmed by the fugitive or his associates. According to her declaration, the petitioner's friend "Dave" disappeared and she knew of a Canadian woman who was intimidated and threatened by the fugitive, but she herself did not describe any threats made against her or her family. The petitioner stated only that she "heard that other people scammed by [the fugitive] have also suddenly disappeared," but she never averred that she was personally threatened or intimidated at any time. While the petitioner expresses her fear of being "the next target" due to her cooperation with law enforcement authorities, the relevant evidence fails to establish that the petitioner was the victim of witness tampering, obstruction of justice, or any other qualifying criminal activity enumerated at section 101(a)(15)(U)(iii) of the Act.

*Substantial Physical or Mental Abuse*

Even if the petitioner had been the victim of witness tampering and/or obstruction of justice, the relevant evidence would fail to establish that she suffered any resultant physical or mental abuse. The regulation at 8 C.F.R. § 214.14 states, in pertinent part:

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

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even

where no single act alone rises to that level[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

The record contains the petitioner's October 27, 2010 declaration as well as a psychological evaluation, dated February 23, 2011. In her declaration, the petitioner stated that she has nightmares relating to her friend [REDACTED] disappearance, and that she is very distressed over what happened to him. The petitioner averred that she sometimes takes medication to sleep because noises make her nervous; she lost a significant amount of weight; she is afraid that the people who took her friend [REDACTED] will harm her and her children; and that some days she does not want to leave her bed and cries all day long. The petitioner recounted further that she is afraid to use her phone and leave home, and never wants to be alone. She also stated that she is afraid to drive because she envisions that someone is following her and will crash into her car as a warning to stay quiet. The petitioner also expressed a fear that her children will be kidnapped and killed.

The petitioner's psychological evaluation, dated February 23, 2011, was prepared by [REDACTED] (“the psychiatrist”), and was based on one three-hour telephone call with the petitioner. According to the psychiatrist, the petitioner reported that she lives in a state of excessive and uncontrollable worry; has difficulty sleeping and concentrating, an exaggerated startle response, and is in constant vigilance of her surroundings. The psychiatrist stated that during these episodes the petitioner experiences intense physical discomfort, nausea, a rapid heart rate, diaphoresis, a feeling as if she were choking or being smothered, and a fear of dying. The petitioner told the psychiatrist that her fear stems from a fear of the fugitive and his co-conspirators and being removed from the United States.

The psychiatrist also noted that the petitioner had undergone significant grief with the murder of two cousins and her daughter's father due to organized crime in Mexico. The petitioner also told the psychiatrist that her anxiety additionally stems from the disappearance of her friend's husband and the chasing of her adult daughter in the street, both incidents which happened in Mexico.

The psychiatrist stated that the petitioner met the criteria for major depressive episode, panic disorder, and generalized anxiety order, and recommended that the petitioner be evaluated further and that she would benefit from psychotropic medications and psychotherapy.

On appeal, counsel states that an extensive discussion of whether the petitioner suffered substantial physical or mental abuse is not required because the psychiatric evaluation “speaks for itself.” A full review of the record fails to demonstrate that, even if the petitioner had established that she was the victim of qualifying criminal activity, she suffered resultant substantial physical or mental abuse.

Neither the petitioner nor the psychiatrist describes any physical abuse that the petitioner has suffered due to her being a witness against the fugitive. Rather, the petitioner claims that she has suffered

mental abuse and her claim shall be evaluated on this basis only.

In her declaration, the petitioner describes the emotional distress she experiences when she thinks about the fugitive or his co-conspirators hurting her or her children, as well as how her fears have affected her daily routines. In the psychological evaluation, the psychiatrist noted that in addition to her fear of the fugitive and his co-conspirators, the petitioner experienced anxiety over the possibility of being removed from the United States and having family members experience violence deaths or emotionally traumatic incidents. While the psychiatrist diagnosed the petitioner with depressive episode, panic disorder, and generalized anxiety disorder, she indicated that the petitioner's mental health conditions were related to a culmination of events, most of which do not relate to her being a witness against the fugitive. We do not minimize the emotional effects of the various events that the petitioner has endured; however, the relevant evidence does not demonstrate that the petitioner suffered substantial mental abuse as a result of having been a victim of qualifying criminal activity.

*Conclusion*

The petitioner has not established that she was the victim of a qualifying crime, or that she suffered substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), and as required by section 101(a)(15)(U)(i)(I) of the Act.

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). The petitioner has not met her burden and remains ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. Consequently, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.