

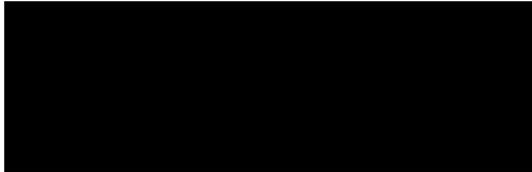
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



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



DH

DATE: **MAY 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:

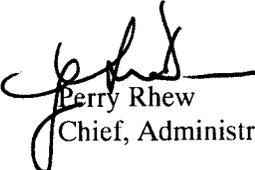


INSTRUCTIONS:

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 Petition for U Nonimmigrant Status (Form I-918 U 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 Guatemala who claims to have entered the United States without being inspected, admitted or paroled on December 15, 2002. The petitioner filed the instant Form I-918 U petition on September 27, 2010. On January 26, 2011, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the petitioner is eligible based on her cooperation with law enforcement in regard to a burglary offense where the perpetrator that had the intent to commit a sex offense.

Certified Criminal Activity

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted is signed by [REDACTED] (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as burglary of a dwelling occupied and provides at Part 3.3 the statutory citation for burglary. Section 810.02 of the Florida Statutes (F.S.A.) provides, in pertinent part:

(1)

....

(b) For offenses committed after July 1, 2001, "burglary" means:

1. Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or
2. Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
 - a. Surreptitiously, with the intent to commit an offense therein;
 - b. After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or
 - c. To commit or attempt to commit a forcible felony, as defined in s. 776.08

. . . .

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains[.]
(West 2012)

Section 776.08 of the F.S.A. defines a forcible felony as “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” Fla. Stat. Ann. § 776.08 (West 2012).

The certifying official describes the petitioner’s involvement in the criminal activity at Part 3.5 as follows: “Defendant prosecuted for burglary of a dwelling. The motivation for the burglary was to commit a sex offense. [The petitioner] and other women has observed defendant exposing himself prior to the burglary. [The petitioner] testified in deposition, pre-trial hearings and trial.” The certifying official indicated that there was no physical injury, but fear to the petitioner. At Part 4.5 the certifying official described the petitioner’s helpfulness as: “[The petitioner] was a critical witness. This case could not have been prosecuted without the assistance of [the petitioner]. She overcame her fear of the defendant and assisted us by testifying. Her testimony will prevent further crimes against other women in the community.”

The record contains the incident/investigative report which identified the crime that was being investigated as “burglary-dwelling occupied,” with a statutory citation for the crime as F.S.A. § 810.02(3A). According to the report’s narrative, an unknown male followed the petitioner into her apartment before she could shut the door and fled the residence after the petitioner’s yells brought her husband. The petitioner believed the unknown male to be the same subject who showed his genitals to other women and had been armed with a firearm. The report noted that the petitioner identified the unknown male as W-L-A-¹ who has been charged with lewd or lascivious conduct, exposure of the sexual organs, and prowling and exposure of sexual organs against other women and is suspected of several other sexually motivated crimes in the area.

In her statement, dated January 20, 2010, the petitioner stated that a man put his foot in the way of her front door as she was attempting to close it and then walked inside her house. The petitioner stated that when the man saw her husband he left. The petitioner stated that the man returned to the apartment and knocked on the door. The petitioner stated that her husband told the man to leave or he would call the police. The petitioner stated that the man asked her husband not to call the police and then left. The petitioner stated that she had previously seen a man on the street corner with his pants down calling to

¹ Name withheld to protect identity of individual.

her, but she does not know if this was the same man and she did not go over to him. In her statement, dated July 29, 2011, the petitioner provided identical testimony to that found in her prior statement.

The record contains court documents indicating that W-L-A- was charged with burglary in violation of F.S.A. §§ 810.02(1) and (3). The record also contains documentation reflecting that W-L-A- was convicted of indecent exposure of sexual organs and loitering or prowling in violation of F.S.A. §§ 800.03 and 856.021 in cases in which the petitioner was not the victim.

Offense was Not a Qualifying Crime

On appeal, counsel asserts that the director failed to recognize that burglary has as an element the intent to commit a felony, which in the instant case, was the intent to commit the qualifying crime of a sex offense. Counsel contends that the petitioner was the victim of the qualifying crime of an attempted sexual assault or abusive sexual contact.

Although the crimes of sexual assault and abusive sexual contact are listed at section 101(a)(15)(U)(iii) of the Act as qualifying crimes, the certifying official did not indicate at Parts 3.1 or 3.5 of the Form I-918 Supplement B that the petitioner was a victim of those crimes. The certifying official also provided no evidence that a sexual assault or abusive sexual contact against the petitioner was ever investigated by law enforcement authorities. While it is clear that the petitioner was helpful to the police in identifying the perpetrator of crimes that involved indecent exposure against other individuals, the Form I-918 Supplement B does not support a conclusion that the petitioner was the victim of sexual assault or unlawful sexual contact. Accordingly, we do not consider the crimes of sexual assault or abusive sexual contact against the petitioner to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute W-L-A- in the future for such a crime.

The crime of burglary 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).

Counsel contends that burglary is similar to sexual assault or abusive sexual contact when the perpetrator is present in a victim's home with the intent of completing the sex offense. However, counsel fails to demonstrate how burglary under F.S.A. § 810.02 contains any specified element of sexual assault, abuse or contact. To be eligible for U nonimmigrant classification, petitioners must establish that they were helpful to the investigation or prosecution of qualifying criminal activity of which they themselves were victims. 8 C.F.R. § 214.14(b)(2), (c)(2)(i). Contrary to counsel's assertion on appeal, the record contains no evidence that the petitioner was the victim of any qualifying crime that the certifying agency investigated or prosecuted. Although the petitioner was helpful in the investigation and prosecution of the perpetrator for indecent exposure against other victims, the record does not establish that the petitioner herself was a victim of such crime or any other qualifying criminal activity.

Remaining Eligibility Criteria

The record shows that the petitioner was helpful to the certifying agency in its investigation of the crime certified on the Form I-918 Supplement B. However, counsel has failed to demonstrate that burglary under F.S.A. § 810.02 is substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act. Being a victim of qualifying criminal activity is a threshold requirement for the remaining U nonimmigrant eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. *See* 8 C.F.R. § 214.14(b), (c)(2). Because the petitioner has not demonstrated that she was the victim of qualifying criminal activity, she cannot meet any of the eligibility criteria for U nonimmigrant classification.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

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