

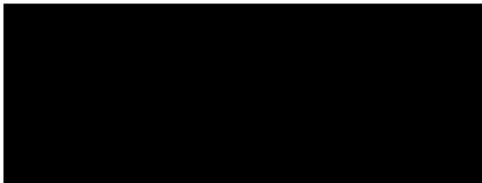
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

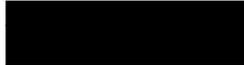


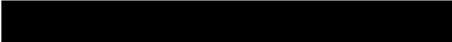
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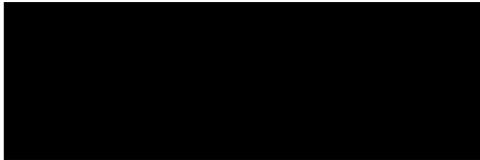
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DATE: **MAY 22 2012** Office: VERMONT SERVICE CENTER FILE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Jerry 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) of the Act, provides, in pertinent part, for U nonimmigrant classification:

- (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;

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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 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 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 states he last entered the United States on or about August 14, 2001 without inspection. The petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification and on February 8, 2005, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action. The law enforcement certification (LEC) in support of the petitioner's interim relief was signed by [REDACTED]

[REDACTED] Southern District of California, ("certifying official") on December 5, 2003. The certifying official identified the criminal activity as 36 counts of violations of 8 U.S.C. § 1324 – alien smuggling. The certifying official noted that the criminal activity occurred on or about August 15, 2001 near Ocotillo, California and that the petitioner was one of 24 illegal aliens apprehended. The certifying official indicated that the petitioner had been helpful and that he had identified the individual charged as the driver of the vehicle transporting the 24 illegal aliens into the United States.

The petitioner filed the Form I-918, Petition for Nonimmigrant U Status, on April 11, 2008. The petitioner did not provide a U Nonimmigrant Status Certification (Form I-918 Supplement B). In response to the director's request for evidence (RFE) counsel for the petitioner noted that as the petitioner had received interim relief he was not required to submit initial evidence with the Form I-918 if he wanted to rely on the LEC and other evidence that had been submitted with the request for interim relief. Counsel requested that the director consider the totality of the record and contended that the record established that the petitioner was a victim of witness tampering. Counsel referred to the complaint<sup>1</sup> filed on August 17, 2001 for violation of Title 8 U.S.C. §1324(a)(2)(B)(iii) – Bringing in Illegal Aliens Without Presentation and Title 8 U.S.C. § 1324(a)(1)(A)(ii) – Transportation of Illegal Aliens. In the complaint at page 7 a reference is made to the petitioner's statement that the defendant told the group of illegal aliens at the border patrol station to tell the agents that they were just a group of people who got together and they did not know anything about a smuggler. Counsel bases his claim that the petitioner was a victim of witness tampering, a violation of Title 18 U.S.C. § 1512, on this reference in the complaint.

Upon review of the record, including the petitioner's response to the RFE, the director found the evidence submitted insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 petition. On appeal, counsel asserts that the petitioner provided information to the U.S. Attorney of a qualifying crime - witness tampering - and the prosecutor's decision to not prosecute the crime of witness tampering is not the fault of the petitioner, the victim in this matter. Counsel urges that the record in

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<sup>1</sup> The complaint is identified as case number [REDACTED] filed in the U.S. District Court, Southern District of California on August 17, 2001.

this matter be considered as a whole and that even though the LEC only referenced 8 U.S.C. § 1324, the evidence of record also establishes that the petitioner was the victim of witness tampering during the investigation and that the petitioner assisted authorities with the investigation of the tampering.

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the petitioner is ineligible for U nonimmigrant classification because he was not the victim of qualifying criminal activity.

On the LEC, The certifying official identified the crimes being investigated or prosecuted only as 36 counts of violations of 8 U.S.C. § 1324 – alien smuggling. There is no reference to witness tampering on the LEC. The inclusion on the complaint of the petitioner’s testimony regarding the smugglers’ instructions to him is not evidence that the certifying official investigated a crime of witness tampering in this matter. Accordingly, counsel’s contention that the petitioner was a victim of witness tampering and that the crime of witness tampering was investigated is not supported in the record. As stated earlier, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including an LEC. *See* 8 C.F.R. § 214.14(c)(4). Accordingly, we consider the certified crime only as alien smuggling in violation of 8 U.S.C. § 1324.

The crime of alien smuggling 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 does not provide any analysis to illustrate that the nature and elements of alien smuggling under 8 U.S.C. § 1324 are substantially similar to any qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. 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 certifying agency investigated or prosecuted a qualifying crime of which the petitioner was a victim.

### *Conclusion*

The petitioner has not met his burden of showing that he was the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act. He, therefore, also failed 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 be dismissed.

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