

identifying information to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: **SEP 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 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 in accordance with the instructions on 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,


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 summarily dismissed.

On December 15, 2011, the director found that the petitioner did not establish that she was the victim of a qualifying crime or criminal activity substantially similar to a qualifying crime. The director denied the Form I-918 U petition accordingly. *See Director's Decision*. On appeal, counsel submits a Notice of Appeal (Form I-290B), reasserting the petitioner's eligibility.

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;

.....
(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. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States without inspection, admission or parole on April 30, 2000. On November 8, 2010, the petitioner filed the instant Form I-918 U petition. On March 17, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On December 15, 2011, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

Analysis

The Form I-918 Supplement B was signed by [REDACTED] Investigator of the [REDACTED] [REDACTED] (certifying official) on September 22, 2010. At Part 3.1, the certifying official indicated that the petitioner was the victim of related crimes, specifically harassment/affray. At Part 3.3, the certifying official cited section 8.04.015 (harassment) of the [REDACTED] Code (CCMC) and section 203.050 (affray) of the Nevada Revised Statutes (N.R.S.) as the criminal activity investigated or prosecuted. At Part 3.5, the certifying official described the criminal activity and the petitioner's involvement as: "On November 18, 2006, [the petitioner's mother's] minor daughter, [the petitioner] was assaulted by three other teenagers while walking her two sisters [REDACTED] [REDACTED]², home from elementary school. [The petitioner] received neck and back injuries as a result of the attack." At Part 3.6, the certifying official described the known or documented injury to the petitioner as:

Photographs taken after the assault show facial, neck and arm injuries. Victim complained of back and side injuries as a result of the various leg kicks given by the defendants while she was on the ground. Seven colored photographs were taken of the victim's injuries and are included in this application.

At Part 4.5, the certifying official described the petitioner's helpfulness as:

The victim's mother [the petitioner's mother] was very instrumental in assisting our office in the investigation, allowing her daughter [the petitioner] and her other two daughters [REDACTED] and [REDACTED] to (sic) help in the prosecution of the defendant. Through their efforts, the case was concluded and a conviction was received against the defendant for harassment and threats and affray.

The attached police report stated that the petitioner was verbally and physically provoked into a fight with six other girls who proceeded to push, punch, kick and pull the hair of the petitioner. The report states that after the fight broke up the defendants threatened the petitioner's sister's that they would be the next ones in a fight.

¹ Name withheld to protect identity of individual.

² Name withheld to protect identity of individual.

According to the petitioner's April 1, 2011 statement, she was verbally and physically provoked into a fight with six other girls who proceeded to push, punch, kick and pull the hair of the petitioner. She states that after the fight broke up the defendants threatened the petitioner's sisters.

On appeal, counsel submits a new Form I-918 Supplement B, dated January 5, 2012, and a statement from the petitioner, which are essentially identical to the ones submitted below. The Form I-918 Supplement B is the only document which contains new information. In Part 3.1 of the new Form I-918 Supplement, the certifying official indicated that the petitioner was the victim of related crimes, specifically battery/harassment.

The statute and regulations require a law enforcement certification to verify the petitioner's victimization and eligibility under subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The regulations do not, however, delegate any authority to determine the petitioner's eligibility for U nonimmigrant classification to the certifying agency; that authority rests with USCIS. Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). USCIS also determines "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).

The certifying official indicated at Part 3.1 of the Form I-918 Supplement B, dated September 22, 2010, that the petitioner was the victim of harassment/affray, while the Form I-918 Supplement B submitted on appeal, dated January 5, 2012, adds the crime of battery at Part 3.1. The certifying official did not indicate on the Form I-918 Supplement B, dated January 5, 2012, why he added the crime of battery to Part 3.1, as he did not list a statutory citation for battery at Part 3.3 or indicate anywhere on the law enforcement certification that the crime of battery was investigated.

The crimes of harassment and affray are not listed as qualifying crimes 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).

On appeal, counsel claims that the petitioner was assaulted but fails to engage in the requisite statutory analysis to demonstrate that the crimes of harassment and affray are substantially similar to any of the qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Counsel's general, unsupported assertions are insufficient to demonstrate that the petitioner was the victim of a qualifying crime, as defined at section 101(a)(15)(U)(iii) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(a)(9).

Remaining Eligibility Criteria

The record shows that the petitioner was helpful to the certifying agency in its investigation of the crimes listed at Part 3.3 of the Form I-918 Supplement B and that she possessed information about these crimes. However, counsel has failed to demonstrate that harassment under section 8.04.015 of

the CCMC and affray under section 203.050 of the NRS are substantially similar to any qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Being a victim of qualifying criminal activity is a threshold requirement for all 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.