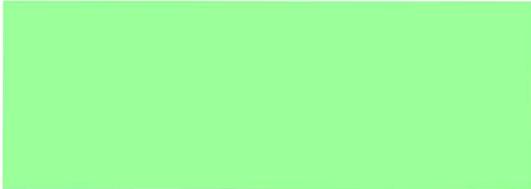


(b)(6)

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



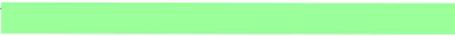
U.S. Citizenship
and Immigration
Services



Date: **APR 19 2013**

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner's representative submits a brief and additional evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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; stalking; 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; fraud in labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

¹ When the petitioner filed her Form I-918 U petition, the crime of stalking was not listed as qualifying

“The term ‘any similar activity’ refers to 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).

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 regulations governing the U nonimmigrant classification at 8 C.F.R. section 214.14(a)(14) defines the victim of qualifying criminal activity as “an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.”

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).

Facts and Procedural History

The petitioner is a native and citizen of Thailand who last entered the United States on August 4, 2008 as a nonimmigrant student. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on May 26, 2011. On February 1, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that she had suffered substantial abuse as a result of qualifying criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity and, therefore, could not show that she met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because she was the victim of sexual misconduct and harassment, which she claims is similar to a qualifying crime.

Claimed Criminal Activity

According to the petitioner in her personal statement, she was waiting at a bus stop when a man masturbated in front of her. A week later she saw the same man again at the bus stop and she and

criminal activity. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4, (VAWA 2013) that came into effect on March 7, 2013 was amended to include stalking. This decision is without prejudice to the filing of a new Form I-918.

her boyfriend were able to get the perpetrator's license number when he returned to his car. They reported the incident to the police. A couple of weeks after the crime, the perpetrator followed the petitioner in his car, and the petitioner flagged down a stranger who helped her get home. In 2006, the petitioner received a subpoena to testify against the perpetrator in a case involving a different victim. After the petitioner testified, a deputy district attorney helped her to obtain a restraining order against the perpetrator.

Analysis

Upon review, we find no error in the director's decision to deny the petition. In support of her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] the Chief of Victim Services of the San Francisco, California, District Attorney's Office (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim at Part 3.1 as abusive sexual contact, sexual assault, and "other," then referenced an attached addendum which also listed sexual battery, sexual assault – lewd behavior, sexual assault – indecency and stalking. At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as California Penal Code (Cal. Pen. Code) sections 646.9(a) (stalking) and 243.4(d)(sexual battery). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner was sexually harassed and stalked by the perpetrator and that he masturbated in front of the petitioner. The certifying official noted that the incident was reported to the police and prosecuted by the San Francisco District Attorney's Office. Regarding any known injuries to the petitioner, at Part 3.6 the certifying official referred to an attached declaration, but no declaration regarding injuries to the petitioner was provided.

Counsel contends that "sexual misconduct and harassment" are similar to the crimes listed in the regulation at 8 C.F.R. 214.14(a)(9). Counsel also asserts that because the certifying official checked the box for abusive sexual conduct and sexual assault at part 3.1 of the Form I-918 Supplement B, the petitioner has been a victim of qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(c)(4) provides U.S. Citizenship and Immigration Services (USCIS) with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of abusive sexual conduct and sexual assault, the evidence in the record does not demonstrate that these crimes or any similar crime was ever investigated or prosecuted. While the certifying official listed the citation for sexual battery at Part 3.3 of the Form I-918 Supplement B, the evidence shows that the petitioner was not the victim of sexual battery.

Under the California Penal Code, sexual battery is defined, in pertinent part, as:

- (d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously

disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. . . .

Cal. Penal Code § 243.4 (West 2013).

In a letter dated October 17, 2012, Assistant District Attorney [REDACTED] stated that the petitioner was a victim of sexual misconduct and harassment that occurred in 2004. [REDACTED] further noted that the petitioner was not the named victim in the prosecution of the perpetrator's case. The petitioner's statement and the police reports do not indicate that the petitioner was ever unlawfully restrained by the perpetrator or forced against her will to perform certain sex acts as described at section 234.4 of the California Penal Code. There is no evidence that the certifying agency investigated or prosecuted a sexual battery against the petitioner. The petitioner has not shown that she was the victim of the crime of sexual battery.

The other crime that was certified, stalking, 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) (emphasis added). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under the California Penal Code, stalking is defined, in pertinent part, as

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking. . . .

Cal. Penal Code § 646.9 (West 2013).

On appeal, counsel claims that the facts of what occurred to the petitioner, or the perpetrator's actions, are similar to the enumerated qualifying crimes. Counsel provides neither citations nor legal analyses comparing the nature and elements of the crime of stalking to any of the qualifying crimes. Counsel also asserts that "[u]nmistakably, [the Act] does not require that similarities of qualifying crimes must be 'substantial.'" Counsel, however, fails to address the regulations which state that the term "any similar activity" refers to 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) (emphasis added). As such, USCIS did use the appropriate standard in adjudicating the petitioner's Form I-918 U petition. Counsel has not demonstrated that the nature and elements of the criminal offense of which the petitioner was a victim, stalking, is substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

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Page 6

Here, the evidence in the record and counsel's contentions fail to establish that the criminal offense of which the petitioner was a victim, stalking, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria

The petitioner's failure to establish that she was the victim of qualifying criminal activity prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity of which she was the victim. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

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); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, that burden has not been met.

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