



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: APR 19 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

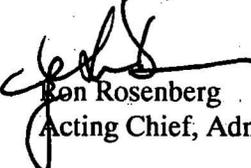
ON BEHALF OF PETITIONER:

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

*Applicable Law*

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

(i) Subject to section 214(p), an alien who files a petition for stats 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[.]

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

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 at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

“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 term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in

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<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

pertinent part:

(6) Illegal entrants and immigration violators.-

\* \* \*

(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

\* \* \*

(7) Documentation requirements.-

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

\* \* \*

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

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 South Korea who entered the United States on November 28, 2003 as a nonimmigrant visitor. The petitioner was placed into removal proceedings before the Newark, New Jersey Immigration Court in 2009 after she overstayed her nonimmigrant visa. The petitioner's next hearing date is May 15, 2013.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on November 16, 2009. On May 28, 2010, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of her claim. The petitioner responded 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 director also found the petitioner had not established that she was admissible to the United States. The petition was denied accordingly and the AAO summarily dismissed the petitioner's subsequent appeal in a decision dated July 18, 2012, incorporated here by reference. On motion, counsel submits a brief which he claims he submitted with the previous appeal, but which the AAO never received. Counsel contends that the petitioner is eligible for U nonimmigrant classification because she has been the victim of felonious assault, that she did suffer substantial abuse as a result of the attack, and that she is admissible to the United States.

*Analysis*

Qualifying Crime

On motion, counsel contends that the acts committed by the perpetrator amount to felonious assault, but the proper inquiry when determining if two crimes are substantially similar under 8 C.F.R. § 214.14(a)(9) is not an analysis of the acts or factual details of the criminal activity, but a comparison of the nature and elements of the investigated or prosecuted crime and an enumerated crime. However, as the petitioner was the victim of enumerated criminal activity, we need not discuss that argument here. 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] Assistant Prosecutor of the [REDACTED] New Jersey Prosecutor's Office (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim at Part 3.1 as felonious assault and attempt to commit any of the named crimes. At Part 3.3, the certifying official listed the statutory citation of the crimes investigated or prosecuted as New Jersey Penal Code sections 2C: 12-1 (assault) and 2C:5-1/2C:14-2(c)(1) (attempted sexual assault). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official referred to an attached police report. Regarding any known injuries to the petitioner, the certifying official again referred to the attached police report. The police report indicated that a man followed the petitioner, wrapped a t-shirt around her neck, and tried forcing her to the ground. The petitioner began screaming and the perpetrator fled. The report also stated that there were no physical signs of injury or any complaint of pain at the time of the report.

A preponderance of the evidence submitted demonstrates that the petitioner was the victim of an attempt to commit qualifying criminal activity. The Form I-918 Supplement B and other relevant evidence shows that law enforcement investigated the crime of attempted sexual assault. Sexual assault is an enumerated crime, and the perpetrator's intent to commit such crime against the petitioner is sufficient for establishing her victimization. The director's contrary decision is withdrawn.

Furthermore, there is no indication that the petitioner has not complied with the regulation at 8 C.F.R. § 214.14(b)(3) which requires the petitioner to show that "since the initiation of cooperation, [s]he has not refused or failed to provide information and assistance reasonably requested." The Form I-918 Supplement B and other relevant evidence indicates that the petitioner reported the attack to the police and provided the information she had available. The fact that the petitioner mentioned briefly

in her statement that she declined to open her case to the media does not indicate that she ceased to be helpful to the police.

Substantial Physical or Mental Abuse

Although the petitioner was the victim of qualifying criminal activity, *de novo* review of the record fails to demonstrate that she suffered substantial physical or mental abuse as a result of her victimization. In her November 12, 2009 statement, the petitioner recounts the attack of which she was a victim, and states that after the incident, she was unable to sleep and her hands were shaking. The petitioner also indicates that she had to go to a psychotherapist for treatment. The petitioner submitted a one page letter from [REDACTED] a licensed clinical social worker, who reported that after two meetings with the petitioner, she diagnosed her as having posttraumatic stress disorder (PTSD). In a second letter from the social worker, she indicates that the petitioner has experienced symptoms of mental anguish such as nervousness, difficulty being home alone, difficulty with concentration, and fear. The social worker also noted that the petitioner experienced nightmares and flashbacks and that the attack has left a permanent imprint on her memory and negatively affects the petitioner's sense of well-being. In addition to the diagnosis of PTSD, the social worker diagnosed the petitioner as having an anxiety disorder.

On appeal, counsel asserts that the regulations do not require an additional independent evaluation to confirm the social worker's diagnoses. While counsel is correct regarding the independent evaluation, the evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of her assault. The Form I-918 Supplement B and the accompanying police report do not demonstrate that the crime against the petitioner resulted in any injury. While we recognize the petitioner's fear about the attack, the petitioner's statement and relevant evidence do not establish that she suffered substantial abuse as a result of the attack. While she and the social worker noted that the petitioner has experienced fear since the incident, the petitioner has not provided sufficient evidence that would indicate that any abuse she suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). Neither the petitioner nor the social worker indicated that the petitioner has been prescribed any medications or a specific course of treatment, other than to continue psychotherapy. Ultimately, the evidence fails to demonstrate that she suffered substantial physical or mental abuse as a result of her victimization.

Inadmissibility

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status, who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

Here, the record shows that the petitioner is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act because the petitioner previously committed fraud and/or misrepresentation in order to obtain a visa. The petitioner was previously found to have committed fraud under section 212(a)(6)(c)(i) of the Act after providing a false bank account number, false address, false social security numbers and a false phone number in order to obtain nonimmigrant worker status through a false corporation.<sup>2</sup>

On motion, counsel asserts that the government has not proven the truth of the fraud allegations. Counsel also contends that because the petitioner was not charged with fraud on the Notice to Appear (NTA), she has not committed fraud. In adjudicating a U petition, USCIS determines a petitioner's admissibility to the United States. An officer from U.S. Immigration and Customs Enforcement (ICE) issued the NTA against the petitioner and his findings regarding the petitioner's alienage and deportability do not preclude USCIS from making a separate inadmissibility finding. The petitioner has not established her admissibility to the United States, and she has failed to apply for Advance Permission to Enter as a Nonimmigrant through the filing of a Form I-192.

### *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. 369, 375 (AAO 2010). While the petitioner has demonstrated that she was the victim of qualifying criminal activity, she has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act or established her admissibility to the United States. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion to reopen is granted. The appeal remains dismissed and the petition remains denied.

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<sup>2</sup> See Notice of Intent to Deny and Denial of Form I-129, Petitioner for a Nonimmigrant Worker, receipt number [REDACTED]