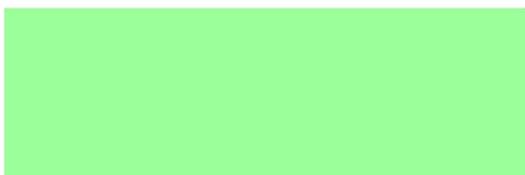




U.S. Citizenship  
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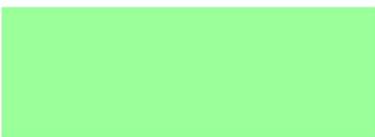


Date: **AUG 30 2013** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

APPLICATION: 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
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.

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.

The director denied the petition because the petitioner did not establish that he was the victim of qualifying criminal activity and he consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a statement and copies of documents already included in the record.

#### *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;

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

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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,

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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 eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility*. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on 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. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. 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."

### *Facts and Procedural History*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who claims to have entered the United States in 1994 without inspection. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 9, 2012. On July 18, 2012, the director issued a Request for Evidence (RFE) that the petitioner resubmit his Form I-918 U petition with his original signature, additional evidence that he was the victim of a qualifying crime and that he suffered substantial physical and mental abuse. Counsel responded to the RFE with statements and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel states that the petitioner was a victim of two separate thefts that occurred at his residence, and the underlying criminal activity, breaking and entering and larceny, are of a "qualifying nature." He claims that the petitioner is suffering mental abuse as a result of the breaking and entering and larceny.

### *Claimed Criminal Activity*

In his declaration, the petitioner recounted that on [REDACTED] 2008, he was returning home when he witnessed individuals coming out of his home. He claims that he was afraid of the individuals retaliating against him because they saw him returning home, but he called the police after he called his wife. He stated that after this incident, he moved his family to another residence. After returning home from work on [REDACTED], 2008, he noticed his front door had been forced opened and items were missing. He called the police and made a report.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] [REDACTED] (certifying official), on [REDACTED] 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as other: breaking and entering and

larceny. In Part 3.3, the certifying official lists breaking and entering and larceny as the criminal activities that were investigated or prosecuted, but he does not provide the statutory citations for the criminal activities. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner was the victim of “a breaking and entering into his residence” on [REDACTED], 2008. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated not applicable.

*Breaking and Entering and Larceny under North Carolina Law are not Substantially Similar to a Qualifying Crime or Criminal Activity*

The certifying official at Part 4.5 in the Form I-918 Supplement B indicates that he investigated a break-in at the petitioner’s residence, but the case was not solved and it was closed “due to all leads being exhausted.” The crimes of breaking and entering and larceny are not specifically 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). Thus, the nature and elements of the breaking and entering and larceny offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under North Carolina General Statutes, “[a]ny person who breaks or enters any building,” including a dwelling house, “with intent to commit a felony or larceny” is guilty of breaking and entering. N.C.G.S. § 14-54 (West 2013). North Carolina law defines larceny as the receipt or possession of stolen goods. N.C.G.S. §§ 14-71, 14-72 (West 2013).

No elements of breaking and entering and larceny under North Carolina General Statutes are similar to any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. The record does not establish that any qualifying criminal activity was investigated or prosecuted by the certifying agency, and the certifying official only describes the petitioner as being a victim of a breaking and entering into his residence when recounting the criminal activity that was investigated or prosecuted at Part 3.5. The petitioner has not shown that any crime other than breaking and entering and larceny were investigated or prosecuted by the law enforcement agency.

Here, the evidence in the record and counsel’s contentions fail to establish that the criminal offenses of which the petitioner was a victim, breaking and entering and larceny, are 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.

*Substantial Physical or Mental Abuse*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that he was the victim of a qualifying crime or criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (USCIS) looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, the certifying official wrote not applicable regarding any injuries to the petitioner. Counsel claims that the petitioner suffers from nightmares and has difficulty sleeping as a result of the break-ins to his residence. In addition, the petitioner claims that he suffered psychological trauma and "cannot live in peace." Counsel claims that the petitioner was going to see a psychologist to obtain a psychological evaluation; however, the record contains no evidence that the petitioner consulted a psychologist. While we do not minimize what the petitioner experienced as a result of the breaking and entering and larceny of his residences, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

#### *Possession of Information Concerning Qualifying Criminal Activity*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

#### *Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

#### *Jurisdiction*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

*Conclusion*

Although the petitioner was helpful to the [REDACTED] in the investigation of the breaking and entering and larceny of his residences, he has not demonstrated that the offenses of breaking and entering and larceny under North Carolina General Statutes are qualifying crimes or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offenses of which he was the victim are qualifying criminal activities prevents him from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.