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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



U.S. Citizenship
and Immigration
Services



Date: **DEC 04 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:

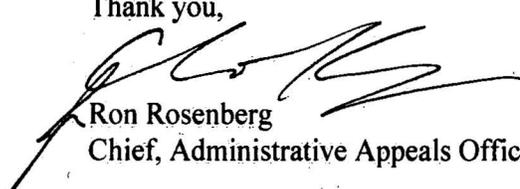


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted and the petition will remain denied.

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 record reflects that on April 19, 2011, the director found that the petitioner was not the victim of qualifying criminal activity and, therefore, could not meet any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner, through counsel, then timely filed an appeal with the AAO that was dismissed on January 11, 2012, because the petitioner did not establish that she was helpful to law enforcement in the investigation or prosecution of any qualifying criminal activity of which she was the victim. The petitioner filed an appeal of the original appeal, which was rejected on May 17, 2013 for lack of jurisdiction. The petitioner then timely filed the instant motion with the AAO. In August, 2013, the petitioner was granted deferred action for childhood arrivals.

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;

(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: . . . abusive sexual contact; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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

(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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated

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 [U.S. Citizenship and Immigration Services (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."

Pertinent Facts and Procedural History

As the facts and procedural history were adequately documented in our previous decisions, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of Argentina who was admitted to the United States in 2000, as the child of a religious worker, her father. The petitioner's father was subsequently accused of molesting young boys, including his nephew, and was the focus of a sodomy investigation in Illinois and Virginia. Based on an April 18, 2006, law enforcement certification (LEC) from a criminal investigator in Virginia, the petitioner filed an early request for U nonimmigrant status and was granted interim relief on January 30, 2007. The investigator indicated that he was assisting the [redacted] Illinois Sheriff's Office in locating the petitioner's father for a sodomy investigation that concerned "two sex violations in Illinois involving young male victims and other possible violations in Virginia." The investigator indicated that the petitioner was helpful in the investigation and possessed relevant information regarding the crimes, but the petitioner was not listed as a victim on the LEC.

The petitioner filed the instant Form I-918 U petition on February 15, 2008. The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal

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activity. On appeal, counsel asserted that the investigator's reference to "other possible violations in Virginia" in the LEC related to the petitioner. In its January 11, 2012 decision on appeal, incorporated here by reference, the AAO explained that the relevant evidence did not demonstrate that law enforcement authorities detected or investigated any claims of sexual abuse by the petitioner's father against her, and therefore, she had not established that she was the victim of a qualifying criminal activity.

On motion, counsel submits a new Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). Counsel states new facts and submits new evidence, and as such, her submission meets the requirements for a motion to reopen. See 8 C.F.R. § 103.5(a)(2). Counsel fails, however, to establish that the AAO's January 11, 2012 decision was based on an incorrect application of law or USCIS policy as required. Consequently, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(3).

The new Form I-918 Supplement B was signed by Scott Cassidy, Deputy Chief of Investigations, Illinois Police Department (certifying official), on June 3, 2013. The certifying official lists the victim at Part 1 as the petitioner's cousin and the petitioner as an indirect victim. He states the petitioner was the victim of "abusive sexual contact" at Part 3.1, but at Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he stated that there was a four year delay in reporting the fondling of an 11 year old boy by a 40 year old man. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated "none."

Analysis

The newly submitted evidence fails to establish that the petitioner was a direct or indirect victim of qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In its Preamble to the U visa rule, USCIS stated:

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide [Department of Justice (DOJ)] personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime.

The petitioner was not the direct victim of her father's sexual abuse of her cousin. As the direct

victim's cousin, the petitioner cannot qualify as an indirect victim based solely on her familial relationship to the victim. The regulation limits indirect victims to certain immediate family members of direct victims of murder or manslaughter or who have been rendered incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i). While there may be circumstances where a bystander to a qualifying crime may suffer "unusually direct injuries" as a result of witnessing a violent crime, there is no evidence in the record that the petitioner witnessed the crime committed against her cousin. The evidence also does not establish that she otherwise suffered an unusually direct injury resulting from her cousin's victimization. Although the new Form I-918 Supplement B identifies the petitioner as an indirect victim of the sexual abuse against her cousin, the certifying official stated that the petitioner suffered no injury. In addition, the new Form I-918 Supplement B is dated over five years after this petition was filed, and consequently cannot be considered in these proceedings. See 8 C.F.R. § 214.14(c)(2)(i) (requiring the Form I-918 Supplement B to have been signed by the certifying official within the six months preceding the filing of the Form I-918 petition); 8 C.F.R. § 103.2(b)(1) (petitioners must establish eligibility at the time of filing). The prior LEC did not identify the petitioner as a victim of the sodomy investigated by the certifying agency. Consequently, the additional evidence submitted on motion does not demonstrate that the petitioner was a victim of the qualifying criminal activity certified in this case.

In addition, there is no evidence that law enforcement authorities investigated or prosecuted any claims of sexual abuse by the petitioner's father against her. As noted in the AAO's January 11, 2012 decision, none of the documents from the certifying agency name or make any reference to the petitioner as a victim of her father's sexual abuse. While the record indicates that the petitioner has been seriously affected by her father's actions, without evidence that law enforcement authorities detected, investigated, or prosecuted sexual abuse or any other qualifying crime by her father against her, the petitioner has not established her eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

The record in this case shows that the petitioner's father was investigated for sodomy and abusive sexual contact against her cousin and other victims. However, the law enforcement certification does not name the petitioner as a victim of her father's offenses and the record contains no evidence that the certifying agency investigated or prosecuted any qualifying crimes perpetrated against the petitioner. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act. The appeal will remain dismissed and the petition will remain denied.

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 motion is granted. The petition remains denied.