

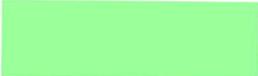
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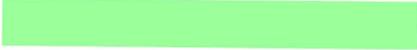
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **DEC 24 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:

SELF-REPRESENTED

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,

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

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 May 21, 2012, 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 then timely filed an appeal with the AAO that was dismissed on March 12, 2013, because the petitioner did not establish that she was the victim of qualifying criminal activity. The petitioner then timely filed the instant motion with the AAO.

*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 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 regulation at 8 C.F.R. § 214.14(a) defines the following pertinent terms:

(9) *Qualifying crime or qualifying criminal activity.* . . . 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.

\* \* \*

(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.

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 Nigeria who entered the United States on January 8, 2006 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on June 6, 2011 which the director denied on May 21, 2012. On appeal, the petitioner asserted that she was eligible for U nonimmigrant classification because she was the victim of a sexual assault and attempted kidnapping. In its March 12, 2013 decision on appeal, incorporated here by reference, the AAO explained that the relevant evidence did not demonstrate that law enforcement authorities investigated or prosecuted any of the qualifying crimes, and therefore, she had not established that she was the victim of qualifying criminal activity.

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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.

On motion, the petitioner submits a new Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) and a letter. The petitioner 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). The petitioner fails, however, to establish that the AAO's March 12, 2013 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 [REDACTED] of the [REDACTED] Police Department (certifying official). The certifying official listed the criminal acts of which the petitioner was the victim at Part 3.1 as abusive sexual contact and "Other: identity theft." At Part 3.3, the certifying official again did not list any statutory citations for the crimes investigated or prosecuted, and instead wrote in, "Harassment/Grand Larceny." At Part 3.5, which provides for a brief description of the criminal activity, the certifying official noted that the petitioner's personal information was used to obtain property without her authorization. He also indicated that the case was closed due to the statute of limitations and that the grand larceny case is pending. Regarding any known injuries to the petitioner, the certifying official wrote at Part 3.6 "none." At Part 4.5, under the helpfulness of the victim section, the certifying official noted that the petitioner said there was drug dealing occurring in her building.

#### *Analysis*

The newly submitted evidence fails to establish that the certifying agency investigated or prosecuted any qualifying criminal activity. While the certifying official stated at Part 3.1 of the Form I-918 Supplement B submitted on motion that the petitioner was the victim of abusive sexual contact and identity theft, the law enforcement certification still does not provide a statutory citation for the crimes investigated or prosecuted at Part 3.3 as required. In fact, at Part 3.3, the certifying official again listed the criminal activity being investigated or prosecuted as "harassment/grand larceny," not abusive sexual contact. The information in the Form I-918 Supplement B and the previously submitted evidence do not show that abusive sexual contact or any other qualifying crime was investigated or prosecuted as required under section 101(a)(15)(U)(i)(III) of the Act.

Furthermore, 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). Without a statutory citation for the crimes investigated or prosecuted, harassment and grand larceny, or any other evidence from the certifying agency establishing the particular state or federal law that was violated, as well as evidence that such violation was investigated or prosecuted, the petitioner cannot demonstrate that she was the victim of a crime substantially similar to any other criminal activity specified at section 101(a)(15)(U)(iii) of the Act. Here, the petitioner does not provide any new evidence or analysis to show that the elements of the crimes investigated are

substantially similar to any of the qualifying crimes listed in the Act.

Furthermore, the new Form I-918 Supplement B submitted on appeal, dated April 10, 2013, was not signed by the certifying official within the six months preceding the June 6, 2011 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i).

*Conclusion*

The record contains no evidence that the certifying agency investigated or prosecuted any qualifying crime. Furthermore, the evidence in the record and the petitioner's statement fail to establish that the criminal offenses of which she was a victim, harassment and conspiracy to commit grand larceny, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including abusive sexual contact. As such, the petitioner has not established that she has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official or local authorities in the investigation or prosecution of qualifying criminal activity. See section 101(a)(15)(U)(i)(III) of the Act.

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.