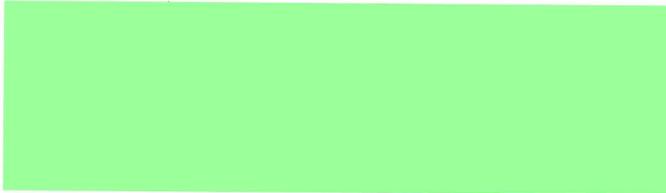


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U.S. Citizenship
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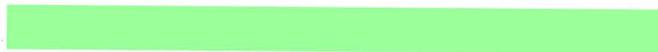


DATE: JUL 05 2013 Office: VERMONT SERVICE CENTER

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.

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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision shall be withdrawn and the matter remanded for entry of a new decision.

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 although the petitioner met the eligibility criteria for U nonimmigrant status, he did not establish that he was admissible to the United States or that he had an approved waiver for his inadmissibility. On appeal, counsel submits a brief.

Applicable Law

Section 101(a)(15)(U) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. 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 at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

“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).

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

For aliens 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: “There is no appeal of a decision to deny a waiver.” As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application, the AAO does not consider whether approval of the Form I-192 application should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Ecuador who claims to have entered the United States in 1997 without being inspected, admitted or paroled by an immigration officer, and then left the United States with an advance parole document and was paroled in 2002. The petitioner filed the Form I-918 U petition on June 13, 2011. On April 2, 2012, the petitioner filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant after the director issued a Request

¹ 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.

for Evidence (RFE) asking the petitioner to submit the dispositions of his 2003 and 2011 arrests. On October 11, 2012, the director denied the Form I-918 petition and the Form I-192 application. The director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but concluded that he could not be granted such status because he was found to be inadmissible and ineligible for a waiver of inadmissibility. The petitioner timely appealed that denial. On appeal, counsel submits a brief.

Analysis

The director found the petitioner inadmissible under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole.² A petitioner's admissibility to the United States is relevant once a determination has been made that he is statutorily eligible for U nonimmigrant status. Based upon our review of the record, the director erred in finding that the petitioner was the victim of qualifying criminal activity and had met the statutory eligibility criteria at section 101(a)(15)(U)(i) of the Act. For this reason, the AAO is withdrawing the director's decision and remanding the matter for entry of a new decision.³

The Petitioner has Not Shown that He is a Victim of Qualifying Criminal Activity

The record does not show that the petitioner was the victim of qualifying criminal activity. In support of his 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] (certifying official).

The certifying official listed the criminal act of which the petitioner was a victim of at Part 3.1 as "other," and then listed "Robbery." At Part 3.3, the certifying official listed the statutory citation of the crime investigated or prosecuted as North Carolina Statute (N.C. Gen. Stat. Ann.) section 14-87 (robbery). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that as the petitioner was exiting his vehicle, suspects pointed a gun and demanded money. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that no injuries were noted. There is no evidence that the certifying agency investigated or prosecuted any crime other than robbery.

Under the North Carolina penal code, robbery is defined as follows:

² Although in his denial of the Form I-192 the director also discussed the petitioner's arrests and conviction, the director only found the petitioner inadmissible under section 212(a)(6)(A)(i) of the Act. The AAO additionally finds that the petitioner is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States from the time of his entry in 1997 until his departure from the United States in 2002.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. Ann. § 14-87 (West 2013).

The particular crime that was certified 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). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question. Here, the petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, or that the certifying agency investigated qualifying criminal activity during the course of the robbery. 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 he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In addition, at Part 4.5 of the Form I-918 Supplement B, which refers to the helpfulness of the victim, the certifying official referred to the petitioner’s criminal history and stated: “These incidents cause me to not support this application.” (Emphasis in original). The certifying official’s statement does not render the Form I-918 Supplement B a law enforcement certification described at section 214(p)(1) of the Act. Furthermore, even without considering the certifying official’s statement at Part 4.5, the Form I-918 Supplement B is not evidence that the petitioner was helpful to law enforcement in the investigation or prosecution of *qualifying* criminal activity because robbery is not a qualifying crime.

Conclusion

The petitioner has not established that he was the victim of a qualifying crime as required by section 101(a)(15)(U)(i)(I) of the Act. For this reason, the AAO withdraws the director’s discussion of the petitioner’s inadmissibility and remands the matter for entry of a new decision. In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with

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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).

ORDER: The director's decision, dated October 11, 2012, is withdrawn. The matter is remanded for entry of a new decision that, if adverse to the petitioner, shall be certified to the AAO for review.