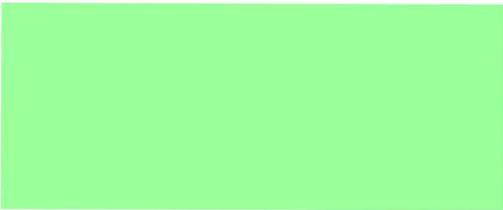




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 12 2013 Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: PETITIONER: [Redacted]

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:

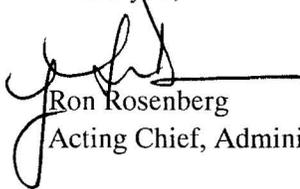


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 its 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 motion 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 any motion to 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 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: (1) she has been the victim of qualifying criminal activity; (2) she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; (3) she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity; (4) she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity; and (5) the criminal activity violated the laws of the United States or occurred in the United States. On appeal, counsel submits a brief.

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: 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[.]¹

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.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one of more of these offenses, if:

(A)The petitioner has been directly or proximately harmed by the perpetrator of the witness tampering, obstruction of justice or perjury; and

(B)There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1)To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2)To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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

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.

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 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."

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 Honduras who was admitted to the United States as a lawful permanent resident on November 22, 1971. In 2006, the petitioner was placed into removal proceedings after being convicted of two aggravated felonies. She exhausted her appeal rights and was ordered removed from the United States. The petitioner filed the instant 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 April 4, 2011. On November 15, 2011, the director issued a Request for Evidence (RFE) requesting that

the petitioner submit additional evidence that she was the victim of a qualifying crime and that she suffered substantial physical and mental abuse. In addition, the director requested the petitioner to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive her grounds of inadmissibility. Counsel responded to the RFE with a Form I-192 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. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that while the petitioner was the victim of grand theft, she was also the victim of qualifying criminal activity, attempted witness tampering. In addition, she states the petitioner suffered substantial mental distress, she possessed credible and reliable information of the criminal activity, she was helpful to law enforcement, and the crime occurred in the United States.

Claimed Criminal Activity

In her declaration, the petitioner recounted that while working for [REDACTED], she witnessed [REDACTED] victimize her clients. The petitioner approached a police detective and reported what she had witnessed, and on the day of [REDACTED] arrest, she assisted the detective by confirming that [REDACTED] was at home. [REDACTED] was convicted of several counts of grand theft and was sentenced to 10 years in prison.

The Form I-918 Supplement B that the petitioner submitted is signed by [REDACTED] Los Angeles, California Police Department (certifying official), on October 21, 2010. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as other: grand theft. In Part 3.3, the certifying official refers to California Penal Code (CPC) § 487, grand theft, as the criminal activity that was investigated or prosecuted. 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 "a witness in a grand theft fraud scam," while her daughter was the actual victim. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner was helpful in their criminal case and the defendant was sentenced to jail time, but she has completed her sentence and was released.

Grand Theft is not Substantially Similar to a Qualifying Crime or Criminal Activity

The crime of grand theft 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). Thus, the nature and elements of the grand theft offense 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 California Penal Code, grand theft is committed “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)...” Cal. Penal Code § 487 (West 2013). In his denial decision, the director concluded that grand theft was not a crime enumerated at section 101(a)(15)(U)(iii) of the Act. On appeal, counsel does not dispute the director’s conclusion that grand theft is not a qualifying crime. Accordingly, grand theft under CPC § 487 is not a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The Petitioner was Not a Victim of Witness Tampering

Under California Penal Code § 136.1(a)(2), attempted witness tampering is defined as: any person who “knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.” (West 2013). Threatening witnesses under CPC § 140 is defined as follows:

- (a) Except as provided in Section 139, every person who willfully uses force or threatens to use force or violence upon the person of a witness to, or a victim of, a crime or any other person, or to take, damage, or destroy any property of any witness, victim, or any other person, because the witness, victim, or other person has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Cal. Penal Code § 140 (West 2013).

Counsel claims that the petitioner was the victim of attempted witness tampering by [REDACTED] [REDACTED] “wanted to prevent” the petitioner from assisting in the investigation against her for grand theft. However, to establish that she was the victim of the qualifying crime of witness tampering in these proceedings, the petitioner must demonstrate that [REDACTED] committed the witness tampering, at least in principal part, as means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring it to justice for other criminal activity; or (2) to further its abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). Counsel states the petitioner assisted the police in arresting [REDACTED], and when [REDACTED] figured out that it was the petitioner who assisted the police, she threatened her. She states the petitioner was “very scared of what would happen to her if she continued to” assist the police, and [REDACTED] had even threatened to kill her in the past. The record does not establish that [REDACTED] committed witness tampering to avoid or frustrate efforts to investigate her for grand theft or that she manipulated the legal system in an attempt to control the petitioner. In addition, other than the petitioner’s own statement, the certifying official does not indicate that [REDACTED] made any threats to the petitioner. In the Form I-290B, counsel also claims that the petitioner was a victim of obstruction of justice by [REDACTED] [REDACTED]. Although the crimes of witness tampering and obstruction of justice are listed at section 101(a)(15)(U)(iii) of the Act, the record does not establish that witness tampering and obstruction of justice were investigated or prosecuted. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of grand theft; he presented no evidence that he or any

other law enforcement entity investigated witness tampering and/or obstruction of justice. The only crime certified at Part 3.3 of the Form I-918 Supplement B was grand theft. The petitioner is, therefore, not the victim of the qualifying crimes of witness tampering and/or obstruction of justice or any other 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she 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 she was the victim of a qualifying crime or criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her 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).

The petitioner states that when she found out [REDACTED] was released from prison, she had to visit her doctor and a psychiatrist because she was feeling "helpless and scared for [her] life." She claims that she still feels threatened by [REDACTED] even though she does not see her. In her March 24, 2011 statement, the petitioner's daughter claims that she is afraid for her mother's safety. The petitioner states she could not eat, sleep, or stop crying, and she was admitted to the hospital on numerous occasions. Medical documents in the record establish that the petitioner has been seen by her doctor for uncontrolled depression and anxiety. In an undated psychological evaluation, therapist [REDACTED] diagnoses the petitioner with dysthymia and post-traumatic stress disorder, based on her history of sexual and physical abuse. She recommends that the petitioner not be removed to Honduras because of the sexual abuse she suffered there. The submitted psychological evaluation does not describe the impact of the criminal activity on the petitioner's mental or physical soundness. While we do not minimize what the petitioner experienced as a witness for the prosecution, the overall evidence does not establish that she 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she 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 she was the victim of a qualifying crime or criminal activity, she 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 Los Angeles, California Police Department in the investigation of grand theft against [REDACTED], she has not demonstrated that the offense of grand theft under CPC §487 is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that: (1) she was a victim of qualifying criminal activity; (2) she suffered substantial physical or mental abuse as a result of having been such a victim, as required by subsection 101(a)(15)(U)(i)(I) of the Act; (3) she possesses information concerning the qualifying crime or criminal activity upon which her petition is based, as required by subsection 101(a)(15)(U)(i)(II) of the Act; (4) she has been, is being, or is likely to be helpful to a federal, state, or local law enforcement authorities, prosecutor, judge or other federal state, or local authorities investigating or prosecuting the qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act; and (5) the criminal activity violated the laws of the United States or occurred in the United States. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.