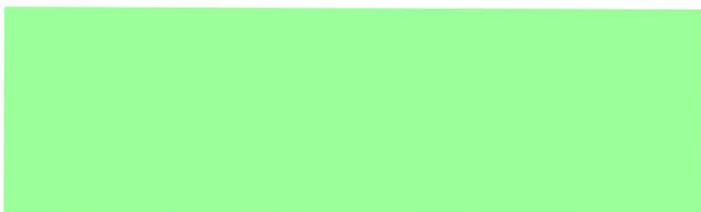




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 12 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 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 he was a victim of qualifying criminal activity or that he suffered substantial physical or mental abuse as the result of having been a victim of a qualifying crime or criminal activity. On appeal, counsel submits a brief and additional evidence.

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 term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, United States Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

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 India who entered the United States on December 24, 2010 on an F-1 student visa. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on September 30, 2011. On April 20, 2012, the director issued a Request for Evidence (RFE) requesting that the petitioner submit additional evidence relating to his victimization. In response to the RFE, counsel submitted a brief and additional evidence, which the director found

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.

insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed.

On appeal, counsel claims that the petitioner is the victim of a qualifying crime and he suffered substantial injury. Counsel also states that the director's decision was not clear or cognizant, and he improperly limited the definition of victim.

Claimed Criminal Activity

In the petitioner's August 25, 2011 statement, he states that on January 11, 2011, he and three of his roommates went to their apartment after attending orientation at their university. While the petitioner was in the bathroom, an armed robbery occurred, whereby his roommates were, according to the petitioner, forced down to the ground and called derogatory names. He remained in the bathroom during the incident and came out only when the perpetrator had left. The record contains a [REDACTED] Kansas Police Department Incident Report regarding the incident, statements from the petitioner and his friend, articles regarding victims and home invasions, and mental health documents for the petitioner.

The Form I-918 Supplement B that the petitioner submitted is signed by [REDACTED] (certifying official), on July 22, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official refers to Kansas Statutes Annotated (K.S.A.) § 21-3427, Aggravated Robbery; K.S.A. § 21-3408, Assault; and K.S.A. § 21-3410, Aggravated Assault, as the criminal activities that were 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: "A robbery occurred at [REDACTED] [The petitioner] was hiding in the bathroom in fear at time of robbery." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "reported mental stress from incident."

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.

In his appeal brief, counsel states that the petitioner suffered direct and proximate harm as a result of the crime. Counsel contends that because the petitioner was "trapped in the bathroom, fully aware of the risk to him immediately outside his door" he is a victim, and he was placed in "reasonable apprehension of immediate bodily harm." Counsel cites to a law review article, the Preamble to the U visa rule, and the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) in support of his claim that the petitioner is a victim. The 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, which counsel submits on appeal, 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 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.

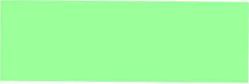
The evidence shows that the petitioner was in the bathroom at the time of the robbery. According to his August 25, 2011 statement, the petitioner heard one of his roommates state “no, no, don’t shoot, please,” and when he opened the bathroom door a little bit, he “saw the situation [and] it was too bad.” The petitioner does not provide any probative details about what he witnessed when he opened the door or other pertinent details about the robbery. The petitioner also states that he is still suffering from this incident and is afraid to go outside because something may happen to him; however, he does not describe in probative detail the impact of the incident on his emotional well-being. In his mental health evaluation, dated September 6, 2011, [REDACTED] indicates that according to the petitioner, he has “recurrent negative thoughts regarding the robbery, impaired concentration that is affecting his school work, and sleep impairment that currently is more due to worrying about his grades rather than thoughts or dreams associated with the robbery.” Overall, the relevant evidence fails to demonstrate that the petitioner suffered an unusually direct injury resulting from his presence in the bathroom at the time his roommates were robbed. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

At Part 3.6 of the Form I-918 Supplement B, the certifying official claims that according to the petitioner, he is suffering “mental stress” from the robbery. The petitioner states that he is nervous to leave his home and sometimes cannot “go out for food.” He claims his mental health affected his grades and he lost his admission to college. In his undated letter, [REDACTED] states that after the robbery, the petitioner was “mentally disturbed,” he did not socialize, and he was afraid to go out at night. [REDACTED] diagnosed the petitioner with anxiety disorder, Post Traumatic Stress Disorder (PTSD), and depression. Counsel claims that the petitioner’s PTSD is a substantial injury, and that victims of armed robbery “suffer harm because of its very nature and type of crime.”

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the robbery. Although [REDACTED] diagnoses the petitioner with anxiety disorder, PTSD, and depression, [REDACTED] indicates that the petitioner’s worrying and sleep impairment are related to his school work and academic goals, rather than the robbery. In addition, the Form I-918 Supplement B indicates only that the crime resulted in mental stress; there is no evidence that any harm amounted to substantial physical or mental abuse. While the robbery impacted the petitioner’s life, the evidence fails to demonstrate that he suffered substantial abuse as a result of his victimization. Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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Conclusion

The petitioner has failed to establish that he was the victim of a qualifying crime or criminal activity or that he suffered resultant substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act.

As in all visa petition proceedings, the petitioner bears the burden of proving his 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.