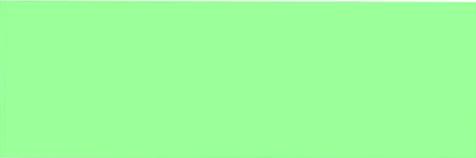


(b)(6)

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

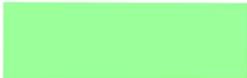


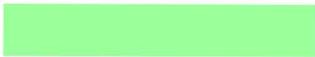
U.S. Citizenship  
and Immigration  
Services



Date: **MAR 27 2013**

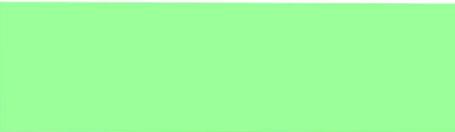
Office: VERMONT SERVICE CENTER

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:

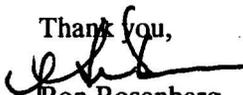


**INSTRUCTIONS:**

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.

If you believe the AAO inappropriately applied the law in reaching our 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 request 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 that any motion must 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

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**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed its decision upon granting counsel's subsequent motion to reconsider. The appeal remained dismissed. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed 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.

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity. On appeal, counsel maintained that felony theft under Louisiana law was a criminal offense similar to wire or mail fraud under Title 8 of the U.S. Code (U.S.C.) § 1341 and as such, the crime of which the petitioner was a victim was similar to blackmail, extortion, obstruction of justice, perjury, or the attempt to commit those crimes. In our prior decision, we compared the crime of theft under the Louisiana Revised Statutes (LRS) to the crimes of blackmail, extortion, obstruction of justice and perjury, and found that theft was not substantially similar to any of those qualifying crimes and dismissed the petitioner's appeal for failing to establish that she was the victim of a qualifying crime.

In his previous motion, counsel stated that the denial was erroneous because the petitioner was the victim of a malicious scheme that took advantage of her vulnerability as a foreign-born woman and defrauded her out of money. Counsel stated that Congress intended to protect victims like the petitioner when it enacted "The Trafficking and Victim Protection Act of 2000 (TVPA)."<sup>1</sup> Counsel maintained further that the nature and elements of LRS § 14:67 (theft) and LRS § 14:66 (extortion) are substantially similar because the two share one out of two elements and that this fifty percent commonality between the two statutes makes them substantially similar. The AAO determined that while both statutes contain language regarding a perpetrator's intent to obtain anything of value, extortion under Louisiana law must contain a threat component and is not limited to a misappropriated item, as it also may include an intent to obtain an "acquittance, advantage or immunity of any description." Theft under Louisiana law does not contain a threat component, only an intent to permanently deprive a victim of a misappropriated item and thus, the nature and elements of theft under LRS § 14:67 are not substantially similar to extortion under LRS § 14:66. The AAO further

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<sup>1</sup> Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). See Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106-386, sec. 1513, 114 Stat. 1464, 1533-37 (2000), amended by Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), tit. VIII, Pub. L. 109-162, 119 Stat. 2960 (2006), amended by Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109-271, 120 Stat. 750 (2006).

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determined that counsel's remaining assertions regarding the petitioner's vulnerability as a foreign-born woman are not relevant to a claim that the AAO misapplied the law or U.S. Citizenship and Immigration Services (USCIS) policy when dismissing the appeal.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part:

\* \* \*

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. . . .

\* \* \*

The petitioner has failed to meet the requirements for a motion to reconsider. In his brief, counsel fails to establish that the director's decision or the subsequent AAO decisions were based on an incorrect application of law or Service policy as required. Counsel briefly contends that because extortion and theft are "grouped together" under Louisiana law and because the consequence of extortion is a theft, the two crimes are similar. Counsel cites no relevant caselaw or precedent decisions to support this position. Further, as the AAO has previously explained, the nature and elements (not the consequence of or location in the criminal code) of the crime investigated or prosecuted must be "substantially similar," not just similar or related to, one of the enumerated qualifying criminal activities. *See* 8 C.F.R. § 214.14(a)(9). The AAO also previously addressed counsel's assertion that Congress intended to protect victims like the petitioner when it enacted the TVPA.

The petitioner has not met her burden of showing that she was the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

On motion, counsel fails to support his contentions with any pertinent precedent decisions to establish that the AAO's previous decisions were based on an incorrect application of law or USCIS policy, and as such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.

**ORDER:** The motion is dismissed. The petition remains denied.