

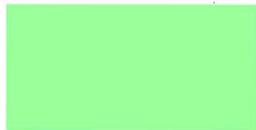
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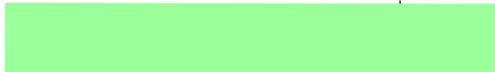
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **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

**DISCUSSION:** The director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal 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. The director determined that the petitioner did not establish that she was the victim of a qualifying crime or suffered substantial physical or mental abuse. The petition was denied accordingly. On appeal, counsel submits a brief.

*Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) 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; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

“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).

(b)(6)

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 or more of those offenses, if:

(A) The petitioner has been directly and 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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Factual and Procedural History*

The petitioner is a native and citizen of Mexico who entered the United States on January 6, 2004 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on April 11, 2011. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity. On April 10, 2012, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition accordingly and the petitioner timely appealed.

On appeal, counsel maintains that the petitioner was the victim of racketeering and practicing law when disbarred when the perpetrator of the criminal activity, J-T,<sup>1</sup> filed immigration applications with U.S.

<sup>1</sup> Name withheld to protect the individual's identity.

(b)(6)

Page 4

Citizenship and Immigration Services (USCIS) for benefits that the petitioner was ineligible for and during the time that J-T was disbarred. Counsel states that J-T committed crimes similar to the qualifying crimes of extortion and obstruction of justice.

*Claimed Criminal Activity*

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted is signed by [REDACTED] of the First Judicial Circuit State Attorney's Office, [REDACTED], Florida (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim of at Part 3.1 as "other," and then listed "Racketeering." At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as Florida Statute (Fla. Stat.) sections 895.03(3) (racketeering) and 454.31 (practice while disbarred or suspended). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated "see attached." Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner and his family suffered a financial loss of approximately \$4,000 and that as a result of the denial of their applications, the family is currently in removal proceedings.

*Analysis*

The Petitioner is Not a Victim of Qualifying Criminal Activity

Under the Florida Penal Code section 895.03(3), racketeering is described as follows, in pertinent part:

It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

Fla. Stat. Ann. § 895.03(3) (West 2013).

Racketeering is defined as, in pertinent part:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

...  
39. Section 836.05, relating to extortion.

...  
42. Chapter 843, relating to obstruction of justice.

Fla. Stat. Ann. § 895.02 (West 2013).

(b)(6)

Page 5

Under the Florida Penal Code, practicing law while disbarred or suspended is prohibited:

Any person who has been knowingly disbarred and who has not been lawfully reinstated or is knowingly under suspension from the practice of law by any circuit court of the state or by the Supreme Court of the state who practices law in this state or holds himself or herself out as an attorney at law or qualified to practice law in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. Ann. § 454.31 (West 2013).

The particular crimes that were certified are not specifically listed as qualifying crimes 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.

Counsel does not assert that the crime of practicing law when disbarred is similar to a qualifying crime, but focuses on racketeering under section 895.03(3). Though the Florida definition of racketeering includes some of the qualifying crimes, it also encompasses several crimes that are not at all similar to any of the qualifying crimes and the certifying official does not specify which subsection of the racketeering activity statute was investigated or prosecuted. The evidence in the record fails to establish that the criminal offenses of which the petitioner was a victim, racketeering and practicing law while disbarred, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act. There 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.

#### *Conclusion*

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. Her failure to establish that she was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Accordingly, we will not address whether the petitioner suffered substantial physical or mental abuse.

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 appeal is dismissed. The petition remains denied.