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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: **MAY 13 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)

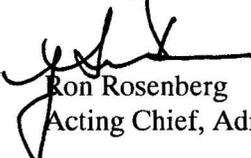
ON BEHALF OF PETITIONER:  


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 (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The petitioner's second appeal was rejected for lack of jurisdiction. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification pursuant to 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 qualifying criminal activity.

The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On motion, counsel submits additional evidence.

#### *Applicable Law*

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 defines qualifying criminal activity as:

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[.]<sup>1</sup>

“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).

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.

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).

### *Analysis*

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 asserted that the investigator’s reference to “other possible violations in Virginia” in the I-918 Supplement B related to the petitioner’s children. In its prior decision, incorporated here by reference, the AAO determined that the petitioner had not demonstrated that law enforcement authorities detected or investigated any claims of sexual abuse by the petitioner’s husband against her children, and therefore, she had not established that she was the victim, either direct or indirect, of a qualifying criminal activity.

On motion, counsel submits evidence that the petitioner has re-reported the crimes and that the petitioner has obtained a protective order against her husband. However, this new evidence does not address the deficiency noted in our prior decision that neither she nor her children were named as victims in the Form I-918 Supplement B, and counsel fails to submit a new Form I-918 Supplement B indicating that any certifying agency has investigated or prosecuted qualifying criminal activity committed against the petitioner or her children. As noted in our prior decision, none of the

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<sup>1</sup> 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.

documents from the certifying agency name the petitioner or her children as victims, or make any reference to the petitioner's husband's sexual abuse of their children. For the reasons stated in the AAO's January 11, 2012, decision, the petitioner has still failed to establish that she is the victim of a qualifying crime or any qualifying criminal activity, as required by subsection 101(a)(15)(U)(i) of the Act.

*Conclusion*

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion is granted. The appeal remains dismissed and the petition remains denied.