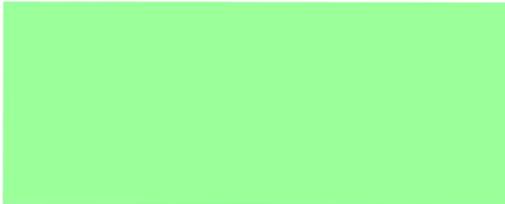




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 19 2014** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 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 denied the petition because the petitioner did not establish that: she was the victim of qualifying criminal activity; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; or she was helpful in the investigation or prosecution of qualifying 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

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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 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

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.

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 petitioner is a native and citizen of Peru who entered the United States on December 14, 2002 on a B-2 nonimmigrant visa with authorization to remain until May 13, 2003. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on May 21, 2012. On July 15, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime, that the petitioner suffered resultant substantial physical or mental abuse, and that she possessed information about the criminal activity. The director also requested a detailed victim statement. Counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner is the victim of stalking by the same individual who burglarized her home.

Claimed Criminal Activity

In her statements, the petitioner recounted that on February 2, 2011, her house was burglarized while she was taking her son to school. She called the police and they came and took fingerprints. In July 2011, the police contacted her because they found a match to the fingerprints and she was asked if she knew the suspect. She recognized the suspect as a person she had seen in her neighborhood. The suspect was arrested and when he was released from jail, the petitioner would see him walking near her house. She fears that he will retaliate against her.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one on appeal. The first Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED]

[REDACTED], Florida, Police Department, on January 31, 2012. Detective [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as burglary. In Part 3.3, Detective [REDACTED] did not list a statutory citation for the criminal activity that was investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, Detective [REDACTED] indicated that the petitioner was a victim of a residential burglary, and he did not indicate that the petitioner had any known or documented injuries resulting from the criminal activity. He also indicated that the petitioner did not possess information concerning the cited criminal activity.

The second Form I-918 Supplement B that the petitioner submitted on appeal was signed by Detective [REDACTED] (certifying official) and date January 28, 2014, and he listed the criminal activities of which the petitioner was a victim at Part 3.1 as felonious assault and burglary. The certifying official again did not list a statutory citation for the criminal activity that was investigated or prosecuted, or indicate any known or documented injury to the petitioner, and he provided the same narrative that was in the first Form I-918 Supplement B regarding the criminal activity being investigated. However, he did indicate that the petitioner possessed information concerning the cited criminal activity.

*Analysis*²

Victim of Qualifying Criminal Activity

The Form I-918 Supplement B and accompanying police incident report indicate that the crime investigated was burglary. The crime of burglary 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 crime investigated, burglary, 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.

The petitioner on appeal does not assert that burglary is substantially similar to a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Instead, the petitioner states that she was the victim of attempted felony assault and stalking.

The record contains no evidence that the certifying official investigated an attempted or actual felonious assault, stalking, or other qualifying crime of which the petitioner was a victim. The first Form I-918 Supplement B provides only that the petitioner was the victim of burglary, not felonious assault or stalking. Although the second Form I-918 Supplement B indicates at Part 3.1 that the petitioner was the victim of felonious assault in addition to burglary, the certifying official does not provide a statutory citation for the qualifying criminal activity that was actually investigated or prosecuted, and the accompanying police incident report does not evidence an investigation into an actual or attempted felonious assault naming the

² We conduct appellate review on a *de novo* basis.

petitioner as a victim. The certifying official's unexplained addition of felonious assault to the second Form I-918 Supplement B is insufficient to demonstrate that the certifying agency investigated an actual or attempted assault against the petitioner. The second Form I-918 Supplement B also does not indicate that the certifying agency investigated or prosecuted a crime of stalking against the petitioner. The record shows that the perpetrator of the burglary was ordered to stay away from the petitioner through a *Stay-Away Order* (non-domestic violence) issued by a circuit court judge; however, the evidence suggests that this *Order* was issued as a routine part of the criminal proceedings against the perpetrator, and not because a judge determined that the petitioner had been the victim of stalking.³

We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the certifying official provided no evidence that any crime other than burglary of a residence was investigated or prosecuted.

The petitioner on appeal does not assert that burglary is substantially similar to a qualifying crime at section 101(a)(15)(U)(iii) of the Act, and her claim that the crimes of felonious assault or stalking were investigated or prosecuted is not supported by evidence in the record. The petitioner is, therefore, not the victim of any qualifying crime, 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 qualifying 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 qualifying criminal activity, as required by section 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 qualifying criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as required by section 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 qualifying 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

³ The *Stay-Away Order* was issued in September 2011. In her personal statement, the petitioner claims that the perpetrator began stalking her when he was released from prison in approximately January 2012.

As the petitioner did not establish that she was the victim of qualifying 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 section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

The petitioner has failed to establish that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.