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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: FEB 06 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

for

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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 a direct or indirect victim of qualifying criminal activity and she consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief, articles on kidnappings in Mexico, and copies of documents already included in the record.

*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;

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(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: . . . kidnapping; . . . extortion; . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated . . . .

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 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 Mexico who entered the United States in May 2008 without inspection. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on October 13, 2011. On April 19, 2012, the director issued a Request for Evidence (RFE) that the petitioner submit evidence that she was the victim of substantial physical or mental abuse as a result of qualifying criminal activity, that she possessed information concerning the criminal activity, that she was helpful to the investigation or prosecution of the criminal activity, that the criminal activity occurred in the United States or violated the laws of the United States, and a properly completed Form I-918 Supplement B. The director also noted the petitioner appeared to be inadmissible to the United States, and requested the petitioner submit either evidence of her admissibility or a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). Counsel responded to the RFE with a second Form I-918 Supplement B, a Form I-192, and additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and the petitioner's Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that the director erred in denying the petitioner's Form I-918 U petition because she was a direct victim of the criminal activity, she suffered substantial physical and mental abuse as a result of her victimization, she was helpful to law enforcement, and the criminal activity violated a statute that provides for extraterritorial jurisdiction.

#### *Claimed Criminal Activity*

In her statement, the petitioner stated that on April 8, 2009, as she was driving her domestic partner and their son home from a baseball game in [REDACTED] Mexico, their sport utility vehicle (SUV) was stopped by a truck. Approximately 15 men dressed in dark clothes and ski masks surrounded their SUV, and opened their doors. Two other SUV's drove up and blocked the petitioner's SUV. The men were armed with machine guns and ordered the petitioner and her domestic partner out of their SUV. The men took the

petitioner's domestic partner to another vehicle and ordered her back in her SUV with their son. The men then drove away with the petitioner's domestic partner, and left her sitting in her SUV in the middle of the street with no wallet, keys, or phone. The petitioner flagged down a passing vehicle and asked to use their phone. She called her domestic partner's cousin who had been at the baseball game with them. When the cousin arrived, they received a ransom call from the men who kidnapped her domestic partner, requesting a million dollars. The petitioner sent her children to her mother's home, and she started gathering the paperwork needed to sell all of their property and their baseball team. The petitioner then went into hiding because the kidnappers had threatened to kidnap her. After the petitioner's domestic partner was released by the kidnappers, he returned to the United States. The petitioner then entered the United States where she feels safe, but is still having difficulty sleeping.

The second Form I-918 Supplement B that the petitioner submitted was signed by Supervisory Special Agent [REDACTED] Federal Bureau of Investigation, Los Angeles, California Division (certifying official), on May 17, 2012. The certifying official lists the criminal activities of which the petitioner was a victim at Part 3.1 as extortion and felonious assault that occurred on April 10, 2008. In Part 3.3, the certifying official refers to Title 18 United States Code (U.S.C.) §§ 1203 and 875, hostage taking and interstate communications, respectively, 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 "[w]hile in Mexico, [the petitioner] was pulled over while driving her truck with her son [and] boyfriend. The men who pulled them over were armed with weapons. They pulled [the petitioner] [and] all the occupants out of the truck and beat [the petitioner's] boyfriend before they kidnapped him for ransom." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner was "forcibly taken out of her vehicle by gunpoint" but "actual physical injuries are unknown." He also stated the petitioner "suffered severe emotional trauma as a result of both the actual kidnapping of her boyfriend and the subsequent telephone calls received from the kidnappers."

*Analysis*

The Petitioner is not a victim of Kidnapping, Extortion, or Felonious Assault

In his appeal brief, counsel asserts that the petitioner was a victim of felonious assault because she was "forcibly taken out of her vehicle at gunpoint." Although the crime of felonious assault is listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the record does not establish that felonious assault was investigated or prosecuted by the certifying agency in this case. The Form I-918 Supplement B must certify that the petitioner was "a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). While the certifying official indicated that the petitioner was the victim of felonious assault and extortion, the only crimes certified as investigated or prosecuted were hostage taking and interstate communications. The record contains no evidence that the certifying official or any other law enforcement entity investigated a crime of felonious assault against the petitioner.

Counsel also claims that the petitioner was a victim of extortion and kidnapping. However, he does not establish that violations of Title 18 U.S.C. §§ 1203 and 875, hostage taking and interstate communications, respectively, are substantially similar to kidnapping and extortion. The nature and elements of the offenses must be substantially similar to one of the qualifying crimes in order for the offenses to qualify as any similar activity under section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9). Counsel provides no statutory analysis of the nature and elements of hostage taking and interstate communications to show that they are substantially similar to the qualifying crimes of kidnapping and extortion.

In addition, counsel does not establish that the petitioner was a victim under the regulation at 8 C.F.R. § 214.14(a)(14). 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. The Attorney General Guidelines for Victim and Witness Assistance (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, 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.

Counsel claims that the petitioner is a direct victim of qualifying criminal activity because she was present at the time of the kidnapping of her boyfriend. He states that the petitioner was “forcibly taken out of her vehicle at gunpoint” and has suffered substantial mental abuse. In her psychological evaluation, Dr. [REDACTED] a psychologist, reports that according to the petitioner, she is a “different person since the incident” and she states the petitioner is “not making progress due to the severity of her symptoms.” The petitioner’s symptoms include but are not limited to, sadness, crying spells, irritability, loss of energy, and insomnia. Dr. [REDACTED] diagnoses the petitioner with depression and post-traumatic stress disorder (PTSD), and indicates that her trauma and anxiety symptoms were triggered by “having her life threatened and by witnessing the kidnapping of her children’s father.” Dr. [REDACTED] states the petitioner’s treatment plan consists of individual therapy sessions and teaching self-coping skills, and she recommends that the petitioner continue to receive therapy on a monthly basis. Dr. [REDACTED] states that the results of her clinical assessment show that the petitioner continues to suffer from serious symptoms of depression and PTSD, and she links these symptoms to the kidnapping incident.

As noted above, counsel has not established that hostage taking in violation of Title 18 U.S.C. § 1203 is substantially similar to the qualifying crime of kidnapping. Moreover, although the petitioner was present during the kidnapping of her boyfriend, the submitted evidence does not establish that she was kidnapped or that she was directly and proximately harmed by any qualifying criminal activity.

Furthermore, as the direct victim's girlfriend, the petitioner cannot qualify as an indirect victim based solely on her familial relationship to her boyfriend. The regulation limits indirect victims to certain immediate family members of direct victims of murder or manslaughter or who have been rendered incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i). While there may be circumstances where a bystander to a qualifying crime may suffer "unusually direct injuries" as a result of witnessing a violent crime, there is no evidence in the record that the petitioner suffered an unusually direct injury resulting from her boyfriend's victimization. The petitioner has, therefore, failed to establish that she 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

As the petitioner did not establish that she was the victim of a qualifying crime or 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 a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that she was the victim of a qualifying crime or criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

According to the Form I-918 Supplement B, the petitioner suffered "severe emotional trauma" as a result of the kidnapping of her boyfriend and the telephone calls from the kidnappers. The petitioner states she is having difficulty sleeping. As noted above, Dr. [REDACTED] diagnosed the petitioner with major depressive disorder and PTSD. She described how the petitioner's mental health was impacted by witnessing her boyfriend being kidnapped and having her life threatened, and how she is "not making progress due to the severity of her symptoms."

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of any criminal activity. Though Dr. [REDACTED] generally describes the petitioner's mental health being impacted by witnessing the kidnapping of her boyfriend, she fails to probatively discuss any permanent or serious harm the incident caused to the petitioner's appearance, health, or physical or mental soundness. The petitioner herself did not mention her depression, PTSD, or how these events have affected her other than noting she has difficulty sleeping. While we do not minimize what the petitioner experienced by witnessing the kidnapping of her boyfriend, the overall evidence does not establish that she has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner has failed to show that the criminal activities that were certified on her Form I-918 Supplement B, hostage taking and interstate communications, are qualifying crimes, she has also failed to establish that she possesses information concerning any of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

To be eligible for U nonimmigrant classification, an alien must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On the Form I-918 Supplement B, the certifying official indicated that the petitioner “had not provided a statement” because she had no legal immigration status in the United States. However, the record shows that the petitioner is currently in the United States, and there is no explanation regarding the relevance of her immigration status and her failure to give a statement about the criminal activity. The certifying official “believed that [the petitioner] would have been cooperative if she were asked to do something.” There is no indication that the petitioner was helpful in the investigation or prosecution of any criminal activity. Accordingly, the petitioner has not established 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.

Criminal Activity Violated Laws of the United States

Counsel asserts that even though the criminal activity in this case occurred in Mexico, it violated a federal extraterritorial jurisdiction statute, Title 18 U.S.C. § 1203, hostage taking. Title 18 U.S.C. § 1203 states, in pertinent part:

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains or threatens to kill, or injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b)(1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless –

(A) the offender or the person seized or detained is a national of the United States . . .

The record establishes that the person seized, the petitioner's boyfriend, is a U.S. citizen. Title 18 U.S.C. § 1203 protects U.S. citizens outside the United States and provides for extraterritorial jurisdiction to prosecute the crime in a U.S. federal court. *See U.S. v. Ali*, 718 F.3d 929, 943 (D.C. Cir. 2013) (18 U.S.C. § 1203 extraterritorial scope "is as clear as can be."). However, counsel did not establish that a violation of Title 18 U.S.C. § 1203, hostage taking, is a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner has not established that the criminal activity violated a U.S. 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 and pursuant to the regulation at 8 C.F.R. § 214.14(b)(4).

#### *Admissibility*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. A full review of the record in this case establishes that the petitioner is inadmissible under subsection 212(a)(6)(A)(i) (present without being admitted) and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act. The director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated January 3, 2013. The petitioner's Form I-192 remains denied, and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

#### *Conclusion*

The petitioner has not demonstrated that the offenses of hostage taking and interstate communications under Title 18 of the United States Code are qualifying crimes or substantially similar to any other qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offenses of which she was the victim are qualifying criminal activities prevents her from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act.

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.