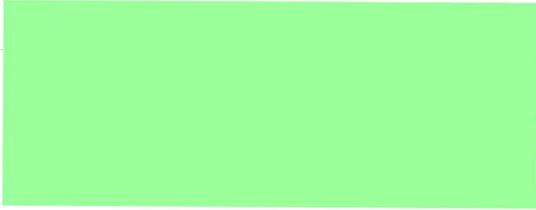




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 29 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 Administrative Appeals Office (AAO) dismissed and rejected subsequent appeals. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The decision dismissing the appeal shall be affirmed and the underlying petition will remain denied.

Pertinent Facts and Procedural History

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner did not establish that he was the victim of qualifying criminal activity and consequently could not meet any of the requirements for U nonimmigrant classification. We affirmed the director's decision, noting that the petitioner failed to establish that he was the victim of a qualifying crime and he consequently is ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. The petitioner, through counsel, filed an appeal of our adverse decision which we rejected for lack of jurisdiction. The petitioner, through counsel, filed a motion to reopen and reconsider our decision and submitted additional evidence.

On motion, counsel reiterates his assertions in the appeal regarding the trauma the petitioner suffered as a result of his home being burglarized and the attempted assault of his daughter during a third burglary. In support of his claim, counsel submits a statement, a psychological evaluation, additional evidence, and documents already included in the record. As the petitioner, through counsel, has submitted new facts supported by documentary evidence, the motion to reopen will be granted. *See* 8 C.F.R. § 103.5(a)(2). However, counsel's submission does not meet the requirements for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). Counsel fails to establish that our August 30, 2013 and January 15, 2014 decisions were based on an incorrect application of law or U.S. Citizenship and Immigration Service (USCIS) policy as required, and he does not support his contentions with any pertinent precedent decisions. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

Analysis

As the applicable law, facts and procedural history were adequately documented in our dismissal of the appeal, they shall not be repeated here. Rather, this decision will focus on the assertions in counsel's statement that were filed in conjunction with this motion to reopen.

Counsel claims that the three separate burglaries committed against the petitioner establish that he was a victim of a conspiracy. In addition, the petitioner's daughter was a victim of attempted assault during the third burglary; however, the police report could not be released because she was a minor at the time of the crime.

As noted in our decision dismissing the petitioner's appeal, the U Nonimmigrant Status Certification (Form I-918 Supplement B) indicates that the crimes of breaking and entering and larceny were investigated, but no statutory citation for breaking and entering or larceny were provided. These two crimes 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). Thus, the nature and elements of the crimes investigated, breaking and entering and larceny, 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.

Counsel claims that the petitioner was a victim of conspiracy to commit burglary because his home was burglarized on three separate occasions. However, as stated above, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). In his statement on motion, counsel does not provide the requisite statutory analysis to demonstrate the substantial similarities in the nature and elements of the crimes investigated and any qualifying criminal activity. The petitioner has not shown that any crime other than breaking and entering and larceny were investigated by the law enforcement agency, or that breaking and entering and larceny are substantially similar to any qualifying criminal activity.

Counsel also states on motion that the petitioner’s daughter was the victim of an attempted assault during the commission of one of the breaking and entering crimes. The petitioner has not, however, established that this crime was investigated by the certifying agency or that the petitioner was either a direct or indirect victim of this alleged crime. *See* 8 C.F.R. § 214.14(a)(14). The petitioner has not obtained a Form I-918 Supplement B that contains information about criminal activity other than breaking and entering and larceny. The petitioner is, therefore, not the victim of any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

In addition, as the petitioner did not establish that he was the victim of qualifying criminal activity, he has failed to establish that he suffered resultant physical or mental abuse, that he possesses information concerning a qualifying crime, or that he was helpful to law enforcement, as required by subsections 101(a)(15)(U)(i)(I), 101(a)(15)(U)(i)(II), and 101(a)(15)(U)(i)(III) of the Act. Accordingly, we shall not further address these issues.

Conclusion

The petitioner’s motion does not establish any error in our prior decisions. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(III) of the Act and his petition must remain denied.

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