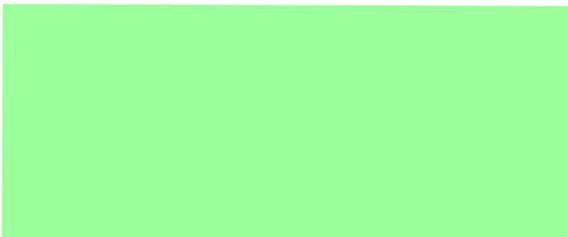


(b)(6)

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: JUN 26 2014 Office: VERMONT SERVICE CENTER FILE: [Redacted]
IN RE: PETITIONER: [Redacted]
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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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. On appeal, counsel submits a statement and indicates that a brief or other evidence will be submitted within 30 days. As of the date of this decision, the AAO has received no additional evidence; however, the Notice of Appeal (Form I-290B) is accompanied by counsel's statement.

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: . . . manslaughter; murder . . . 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 definitions:

(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 . . . will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter . . . and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. . . .

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 claims to have initially entered the United States in or around 1997 without inspection, admission or parole. The petitioner departed the United States and attempted to reenter on January 30, 2012 without inspection, admission or parole. She was removed from the United States on February 16, 2012. 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 February 11, 2013. On the same day, she filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to waive her grounds of inadmissibility. On May 30, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime. Counsel responded to the RFE with 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 claims that the crime investigated was homicide which "should be sufficient evidence that [the petitioner] has suffered a qualifying crime."

Claimed Criminal Activity

In her declaration, the petitioner recounted that on November 12, 2011, her husband was shot and killed while hunting. She was at work that day and did not witness the incident.

The Form I-918 Supplement B that the petitioner submitted was signed by Sheriff [redacted] Oregon, Sheriff's Office (certifying official), on October 26, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as accidental death of spouse. In Part 3.3, the certifying official indicated that accidental death of spouse was the criminal activity that was investigated or prosecuted but he did not specify a statutory citation for the criminal activity. At Parts 3.5 and 3.6, which ask the certifying official to briefly describe the criminal activity being investigated or prosecuted and for a

description of any known or documented injury to the petitioner, he stated “[s]ee attached incident report(s).”

Analysis

Accidental Death of Spouse is Not Substantially Similar to a Qualifying Crime or Criminal Activity

The Crime/Incident Reports indicate that the crime investigated was a hunting incident with a gunshot wound, and the Form I-918 Supplement B indicates that “accidental death of spouse” was investigated, but no statutory citation for “accidental death of spouse” or “hunting incident” was provided. These two types of events 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 crime investigated, accidental death of spouse and hunting incident, 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.

In response to the RFE, counsel claims that although the District Attorney did not press criminal charges against the perpetrator, manslaughter or felonious assault could have been charged because of “the reckless nature and involvement of a deadly weapon in the incident.” In addition, he states the death certificate indicates that the petitioner’s husband was the victim of homicide.

The record of the certifying agency’s investigation contains no evidence that the certifying official or any other law enforcement entity investigated a qualifying crime, such as manslaughter, or felonious assault. While an investigation into the petitioner’s spouse’s death was pursued, the certifying official only indicates that an accidental death was investigated, and makes no mention on the Form I-918 Supplement B or the accompanying police reports that the certifying agency pursued the investigation as manslaughter, felonious assault, or any other qualifying criminal activity.

Counsel claims that the petitioner is a victim of qualifying criminal activity because “the shooter should have identified [the petitioner’s husband] as a person not an animal and it was reckless and an extreme indifference to human life for the shooter to not identify [the petitioner’s husband].” 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 appeal and in response to the RFE, counsel does not provide the requisite statutory analysis to demonstrate the substantial similarities in the nature and elements of the crime investigated and any qualifying criminal activity. The petitioner has not shown that any crime other than the accidental death of her spouse was investigated by the law enforcement agency, or that accidental death of spouse is substantially similar to any qualifying criminal activity, including felonious assault and manslaughter. The petitioner is, therefore, not the victim of any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Possession of Information Concerning Qualifying Criminal Activity and Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

To be eligible for U nonimmigrant classification, a petitioner must establish that she possesses information concerning the qualifying criminal activity upon which her petition is based; and 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. Sections 101(a)(15)(U)(i)(II) and 101(a)(15)(U)(i)(III) of the Act. On the Form I-918 Supplement B, the certifying official did not indicate at Parts 4.1 and 4.2 that the petitioner possessed information concerning any criminal activity or that she was helpful to law enforcement. There is no indication in the record that the petitioner possessed any information regarding the criminal activity that resulted in her husband's death or that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. Accordingly, the petitioner has not established that she possesses information concerning a qualifying crime or that she was helpful to law enforcement, as required by subsections 101(a)(15)(U)(i)(II) and 101(a)(15)(U)(i)(III) of the Act, and we find additional grounds for denial of the petition.¹

Conclusion

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

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

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).