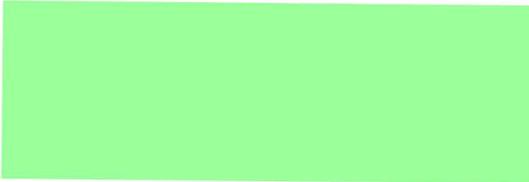


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

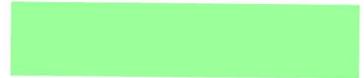


U.S. Citizenship
and Immigration
Services

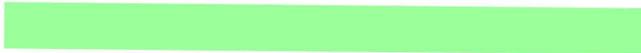
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Date: **MAR 18 2014** Office: VERMONT SERVICE CENTER



IN RE:



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 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 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: . . . stalking; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

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.

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

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

* * *

(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 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 South Korea who was granted lawful permanent resident status on December 19, 1996.² 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 21, 2011. On the same day, she filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), to waive her ground of inadmissibility. On December 7, 2011, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that she suffered substantial physical and mental abuse. The petitioner responded to the RFE with statements and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that although burglary was the crime investigated, the petitioner is a victim of stalking and aggravated assault. He states the petitioner lives "in fear for her safety" and has been harmed mentally and physically.

Claimed Criminal Activity

In her statement, the petitioner recounted that when she was a junior in college, she noticed a strange man following her home from the bus stop over several days. One day when she noticed the strange man following her, she ran home. After she arrived home, she heard noise outside her apartment window, and when she went outside to investigate it, she saw a man standing near her apartment. She screamed, ran back into her apartment, and checked her windows. She noticed the man at her bedroom window, and called the police but they were unable to locate the suspect. About a year later she moved into another apartment complex, and one day when she was returning home from school, she noticed her underwear on the steps to

² An immigration judge ordered the petitioner removed from the United States on April 20, 2005. The petitioner's motion to reopen to seek voluntary departure was granted, and she is scheduled for a removal hearing on April 18, 2014.

her apartment. She did not report this incident to the police. In 2006, she moved into another apartment complex, and when she returned home from a weekend away, the pots of plants that she kept on her balcony were missing. She asked the apartment manager and maintenance person what happened to her plants, and they stated her plants were knocked off her balcony. Since she was not home that weekend, she worried that someone had attempted to break into her apartment. After this incident, she moved into a larger unit in the same apartment complex. During 2007, she had multiple break-ins and attempted break-ins, but none of her personal property was taken. She had the apartment manager nail the window screen in, but during another attempted break-in, the nails were removed from the screen, so she reported the incident to the police. The police were unable to locate the suspect but told her that the suspect was probably someone she knew, who knew her schedule well, and was watching her. She moved into another apartment and while she was sleeping one night, someone broke into her apartment and took her laptop. She called the police and again they were unable to locate the suspect, but they told her that it was probably someone who knew her schedule very well. She believes that she is being stalked and she lives in a state of fear.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] San Diego, California, Police Department (certifying official), on October 6, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as burglary. In Part 3.3, the certifying official refers to California Penal Code (CPC) § 459, burglary, as the criminal activity that was 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 an “unknown suspect gained entry into [the petitioner’s] residence through an unlocked door. The suspect then took her computer.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated “no injuries reported.”

Analysis

Burglary under California Law is Not Substantially Similar to a Qualifying Crime or Criminal Activity

The Form I-918 Supplement B and the San Diego Regional Crime/Incident Report indicate that the crime of burglary, under CPC § 459, was investigated. 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.

Under California Penal Code, “[e]very person who enters any . . . apartment . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.” Cal. Penal Code § 459 (West 2013). California law defines stalking as, in pertinent part:

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking

Cal. Penal Code § 646.9 (West 2013).

No elements of burglary under Cal. Penal Code § 459 are similar to stalking under Cal. Penal Code § 646.9. The statute investigated in this case involves a person entering an apartment with intent to commit a larceny or a felony. Stalking involves a person following or harassing another person and making a threat with intent to place that person in reasonable fear for her safety or the safety of her immediate family. 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. The record contains no evidence that the certifying official or any other law enforcement entity investigated stalking, and the certifying official only describes the petitioner being burglarized when recounting the criminal activity that was investigated or prosecuted at Part 3.5. The only crime certified at Part 3.3 of the Form I-918 Supplement B was burglary, and the police documents noted that the crime was burglary. There is no evidence that the certifying agency investigated or prosecuted attempted or actual stalking.

On appeal, counsel claims that the petitioner has been the victim of a stalker for several years. He states that the conduct involved in committing a burglary “is to commit a felony within the home” and the police reports indicate that the petitioner was a victim of two felonies, aggravated assault and stalking. He explains that the “multiple burglaries, stalking, and other personal violations taken as a whole clearly demonstrate [the petitioner] was a target of a [sic] serious of [sic] crimes,” and she lives in fear for her safety. 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 brief, 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 demonstrated that the nature and elements of the criminal offense of which she was a victim, burglary, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including stalking. The petitioner is, therefore, not the victim of the qualifying crime of stalking or any other qualifying 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 qualifying criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result and 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 qualifying 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).

In her statement, the petitioner claims that she does not feel safe and she fears someone will break into her apartment again. She states that she leaves the lights on in her home, she has insomnia and nightmares, she frequently checks her closets and bathroom, and she sleeps with her cellphone and a knife. In his statement, the petitioner's boyfriend reports that when he stays at the petitioner's apartment, the petitioner makes him check the closet and front door to make sure it is locked. He states the petitioner sleeps with the light on and with her cellphone and a knife, and sometimes she wakes up screaming and he has to calm her down. In his psychological evaluation, [REDACTED] diagnoses the petitioner with post-traumatic stress disorder (PTSD). [REDACTED] reports that the petitioner's symptoms include "intense anxiety and paranoia" that she is being followed and may be harmed, insomnia, an obsession with checking that she is safe, and difficulty completing her work. He relates the petitioner's symptoms to the "break ins and other stalking behavior," and notes that her symptoms are affecting her relationships with her significant others and her work.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the burglary. The record shows that the petitioner has been diagnosed with PTSD and she suffers from insomnia, paranoia, and nightmares. However, the petitioner, her boyfriend, and [REDACTED] do not probatively discuss any permanent or serious harm that the petitioner has suffered as a result of being a burglary victim, including permanent or serious harm to the petitioner's appearance, health, or physical or mental soundness. In addition, the Form I-918 Supplement B indicates that no injuries were reported. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that she suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). 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 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 subsection 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

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 subsection 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

Although the petitioner was helpful to the [REDACTED], California, Police Department in the investigation of the burglaries, she has not demonstrated that the burglary offense under California Penal Code is a qualifying crime or substantially similar to any other qualifying criminal activity 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 offense of which she was the victim is a qualifying criminal activity 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. Accordingly, the appeal will be dismissed.

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