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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: **OCT 10 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 failed to establish that she was a victim of witness tampering and had suffered substantial physical or mental abuse as a result of her victimization. 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;

Witness tampering is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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.

* * *

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one of more of these offenses, if:

(A)The petitioner has been directly or proximately harmed by the perpetrator of the witness tampering, obstruction of justice or perjury; and

(B)There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1)To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2)To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(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[.]

* * *

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 Romania who initially entered the United States on June 1, 2001 as a B-2 nonimmigrant visitor. She is currently admitted to the United States as an F-1 nonimmigrant student. 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 September 26, 2011. On April 19, 2012, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity and that she was directly or proximately harmed by the perpetration of witness tampering. In addition, the director requested evidence that the person who signed the Form I-918 Supplement B was a qualifying certifying official. Counsel responded to the RFE with an updated Form I-918 Supplement B and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner has suffered substantial emotional and mental abuse as a result of being a victim of witness tampering.

Claimed Criminal Activity

In her statements, the petitioner recounted that on April 16, 2011, she observed a man and woman arguing outside of her friend's dorm room. Fearing for the woman's safety, she called the police and when they arrived, they arrested the woman. As the woman was being arrested, her friend approached the petitioner and her friend and began threatening them. After the woman left, the petitioner and her friend worried that she may return so they informed the police about the threats.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the director's RFE. The first Form I-918 Supplement B that the petitioner submitted was signed by District Attorney [REDACTED] Judicial District, [REDACTED] Colorado, on August 19, 2011. Mr. [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as witness tampering. In Part 3.3, the certifying official referred to Colorado Revised Statutes (C.R.S.) §§ 18-8-0706 and 18-09-0111, retaliation against a witness and harassment, respectively, as the criminal activities that were investigated or prosecuted. Mr. [REDACTED] did not provide any narrative regarding the criminal activity being investigated or any known or documented injuries to the petitioner.

The second Form I-918 Supplement B that the petitioner submitted along with her RFE response was signed by Assistant District Attorney [REDACTED] (certifying official) of the [REDACTED] Judicial District Attorney's Office, [REDACTED] Colorado. The certifying official listed the same criminal activities being investigated as the first Form I-918 Supplement B, and did not provide any narrative regarding the criminal activity being investigated or any known or documented injuries to the petitioner.

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Analysis

We conduct appellate review on a *de novò* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004). Based on our review, we find no error in the director's decision to deny the petition.

Victim of Qualifying Criminal Activity

In order to establish that she was the victim of the qualifying crime of witness tampering, the petitioner must demonstrate that the perpetrator of the witness tampering committed such crime, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice for other criminal activity; or (2) to further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). In her statements, the petitioner explains that she and her friend were threatened by the perpetrator after the perpetrator's friend was arrested for a domestic disturbance. The record does not show that the petitioner was threatened by the woman who was arrested for the domestic disturbance.

The friend of the woman who was arrested is the perpetrator of the witness tampering and, therefore, the petitioner cannot satisfy 8 C.F.R. § 214.14(a)(14)(ii). First, 8 C.F.R. § 214.14(a)(14)(ii)(B)(1) is not satisfied because the perpetrator of the witness tampering was not being investigated, arrested, or prosecuted for other criminal activity by any law enforcement entity. There is no evidence in the record that when the perpetrator threatened the petitioner she was being investigated for any unlawful activity. Therefore, the witness tampering was not done to "avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the *perpetrator [of the witness tampering]* for other criminal activity." (Emphasis added). Second, the petitioner cannot satisfy 8 C.F.R. § 214.14(a)(14)(ii)(B)(2) because there is no evidence that the perpetrator of the witness tampering is using the legal system to abuse, exploit or impose control over the petitioner. Consequently, the petitioner does not meet the definition of a victim of witness tampering for U nonimmigrant classification at 8 C.F.R. § 214.14(a)(14)(ii). The petitioner has also failed to demonstrate that she is the victim of any other qualifying criminal activity at section 101(a)(15)(U)(iii) 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. Accordingly, we shall not further address this issue.

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).

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