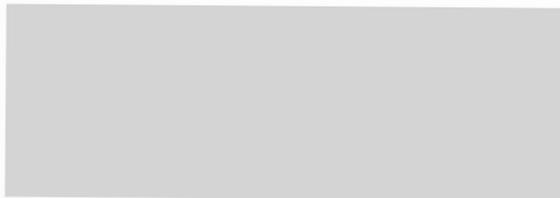


(b)(6)

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: **APR 15 2015** 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 or establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 sustained.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime or criminal activity. On appeal, the petitioner 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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in

foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

We conduct appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Peru who entered the United States on December 29, 2010, with a B2 visitor’s visa. 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 May 28, 2013. The director issued a request for evidence (RFE) that, among other things, the petitioner was a victim of a qualifying crime, had suffered substantial physical or mental abuse as a result, and had been, was being, or was likely to be helpful in the investigation or prosecution of the criminal activity. The petitioner responded to the RFE with an amended Form I-918 Supplement B and additional evidence. The director found the evidence insufficient to establish that the petitioner was the victim of a qualifying crime. Therefore, the director found that the petitioner was unable to meet any of the eligibility criteria at section 101(a)(15)(U)(i) of the Act and denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that she was the victim of unlawful criminal restraint, a qualifying crime.

Claimed Criminal Activity

In April 2013, the petitioner and her mother were trapped in their second floor apartment during a fire because the apartment owner had installed bars on the windows in violation of zoning ordinances. The petitioner was critically injured in the fire and her mother was killed.

The petitioner filed as initial evidence with her Form I-918 U petition a Form I-918 Supplement B signed by [REDACTED] Homicide Supervisor, Prosecutor’s Office, [REDACTED] New Jersey (certifying official), indicating that she was the victim of causing or risking widespread injury or damage, N.J. Stat. Ann. § 2C:17-2c.

In response to the RFE, the petitioner submitted an amended Form I-918 Supplement B, dated March 10, 2014, in which the certifying official indicated that the petitioner was also the victim of unlawful criminal restraint. The petitioner also submitted a letter from the certifying official, noting that unlawful criminal restraint, N.J. Stat. Ann. § 2C:13-2a, was among the crimes being investigated and potentially prosecuted in relation to the fire that injured the petitioner and killed the petitioner's mother.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find that the petitioner has established her eligibility for U nonimmigrant status.

The petitioner has demonstrated that she is the victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. In her decision, the director correctly found that the crime listed in the petitioner's original Form I-918 Supplement B, risking widespread injury or damage, is not a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. The director also correctly found that the crime is not "substantially similar" to any of the statutorily listed qualifying crimes and therefore could not be considered a "similar activity" as described in section 101(a)(15)(U)(iii) of the Act.

However, the petitioner also submitted a revised Form I-918 Supplement B, dated March 10, 2014, and an accompanying letter which certified that the petitioner was also the victim of unlawful criminal restraint in violation of N.J. Stat. Ann. § 2C:13-2a. Unlawful criminal restraint is a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act. Nothing in the record contradicts the certifying official's certification of the crime, in which the petitioner and her mother were trapped in their home during a fire due to the illegal placement of bars on their second floor apartment windows, as unlawful criminal restraint. Therefore, the petitioner has submitted evidence sufficient to demonstrate that she was the victim of a qualifying crime or criminal activity as required by Section 101(a)(15)(U)(i) of the Act.

We also find that the petitioner has met the other eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner submitted a personal statement in which she probatively describes the lasting and ongoing medical and emotional effects the criminal activity caused her. She also submitted various medical documents and a psychological evaluation written by [REDACTED] Psy. D., who indicated that the petitioner suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood and Bereavement as a result of her victimization. In her denial decision, the director noted that the petitioner has demonstrated "substantial physical and mental trauma" as a result of her own injuries in the fire and the death of her mother. The preponderance of the evidence demonstrates that the petitioner has met the requirement at section 101(a)(15)(U)(i)(I) that she have suffered substantial physical or mental abuse as a result of being a victim of a qualifying crime.

The director did not reach the remaining eligibility requirements due to her finding that the petitioner was not the victim of qualifying criminal activity. However, the evidence of record demonstrates that

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the petitioner has met those requirements. The petitioner was present for the fire in her apartment, was injured, and witnessed her mother trapped in the apartment. The certifying official also indicated in the Form I-918 Supplement B that the petitioner possesses information about the criminal activity. This establishes that the petitioner possesses information regarding the criminal activity as required by section 101(a)(15)(U)(i)(III). Additionally, the certifying official noted that the petitioner provided a sworn statement to law enforcement officials regarding the incident and agreed to testify in court if the case went to trial. He stated that potential criminal prosecution of the apartment owner would be impossible without the petitioner's testimony. Therefore, the petitioner has been helpful to law enforcement as required by section 101(a)(15)(U)(i)(III). Finally, the petitioner has met the requirement of section 101(a)(15)(U)(i)(IV) because the qualifying crime at issue, unlawful criminal restraint under N.J. Stat. Ann. § 2C:13-2a, is a violation of a law of and occurred in the United States. Accordingly, the petitioner has established her eligibility for U nonimmigrant status under section 101(a)(15)(U) of the Act.

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The petitioner has met that burden. Accordingly, her appeal will be sustained.

ORDER: The appeal is sustained.