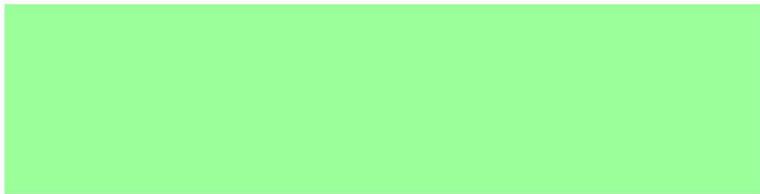


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

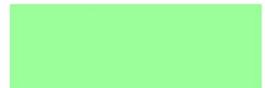
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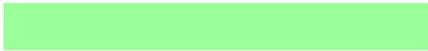
Office: VERMONT SERVICE CENTER

FILE:



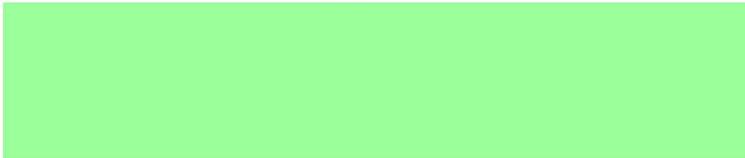
IN RE:

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.

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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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 determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification.

On appeal, the petitioner submits a brief and additional evidence.

*Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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 labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

“The term ‘any similar activity’ refers to 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).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 explained 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[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of

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<sup>1</sup> The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4, (VAWA 2013) that came into effect on March 7, 2013, was amended to include stalking and fraud in foreign labor contracting.

the victim.” In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. Citizenship and Immigration Services (USCIS) will assess 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. . . .

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). We conduct appellate review on a de novo basis. 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 Honduras, who did not make claims or submit evidence regarding the date and nature of her last entry into the United States. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on December 26, 2012. On October 31, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that she had suffered substantial abuse as a result of qualifying criminal activity. Specifically, the director noted that the crime listed on the petitioner’s Form I-918 did not match the crime she described in her initial personal statement and sought clarification. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity and, therefore, could not show that she met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act, and denied the petition. On appeal, the petitioner contends that she is eligible for U nonimmigrant classification because she submitted sufficient evidence to establish that she was the victim of aggravated assault with a deadly weapon, which she claims is similar to the qualifying crime of felonious assault.

#### *Claimed Criminal Activity*

Although the petitioner claims to have twice been the victim of a workplace robbery, the accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), relates to only one robbery on [REDACTED] 2011. The petitioner explained that she was in the bathroom of her workplace when it was robbed, and that she heard the robbery from within the bathroom. Once the police arrived, the petitioner claims she told them what she had heard.

*Analysis*

In support of her Form I-918 petition, the petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Sergeant, Office of the Chief, [REDACTED] Texas Police Department (certifying official). The certifying official listed the criminal act of which the petitioner was a victim at Part 3.1 as aggravated robbery, and at Part 3.2, he indicated that the crime took place on [REDACTED] 2011. At Part 3.3, the certifying official listed the statutory citation of the crime investigated or prosecuted as a violation of section 22.02(a)(2) of the Texas Penal Code (Tex. Penal Code), which is aggravated assault with the use of or exhibition of a deadly weapon during the commission of the assault. This crime is an activity similar to felonious assault, one of the crimes listed in the statute. At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner was the victim of an aggravated robbery while at work and that the suspects robbed the business at gunpoint. At Part 3.6, the certifying official did not describe any known or documented injury to the petitioner. At Part 4.1 the certifying official answered “Yes” to the question regarding whether the petitioner possessed information concerning the criminal activity. At Part 4.5, the certifying official stated that “[the petitioner] gave the police a full report at the time of the Robbery [and] . . . continues to be willing to assist with requests in regards to any information she has related to the Robbery.”

The petitioner provided a copy of the police report from the [REDACTED] 2011 crime, which showed that the petitioner was in the bathroom when the crime occurred. She also provided a report for a similar crime of robbery with a deadly weapon that took place at her place of employment on [REDACTED] 2010. In her statement accompanying the Form I-918, the petitioner described only being the victim of a robbery at her workplace on [REDACTED] 2010; however, that crime was not listed by the certifying official on the Form I-918 and therefore does not establish that the petitioner is the victim of a qualifying crime for that incident. The petitioner also submitted an evaluation from a psychologist who found that the petitioner meets the criteria for major depressive disorder, generalized anxiety disorder, and post-traumatic stress syndrome after being twice robbed at her place of employment. The psychologist further described the physical effects of the incidents as causing the petitioner’s insomnia.

In response to the RFE, the petitioner provided a personal statement in which she confirmed that she was in the bathroom at her place of employment while the [REDACTED] 2011 crime occurred. Even so, the petitioner indicated that she heard everything and gave the police a statement about what she heard. On appeal, the petitioner asserts that she has submitted sufficient evidence to show that she was the victim of a qualifying crime.

In her denial decision, the director determined that the petitioner had failed to meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act (substantial physical or mental abuse, possession of information, helpfulness, and jurisdiction over the criminal activity) because she was an “auditory witness” and therefore not the victim of a qualifying crime. However, the preponderance of the evidence submitted below and on appeal demonstrates that the petitioner was a

victim of the qualifying crime, and has met the other requirements.

The record shows that the petitioner was a victim under the regulation at 8 C.F.R. § 214.14(a)(14) because she suffered direct and proximate harm as a bystander to a violent crime. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence." *Id.* at 9. The evidence shows that the petitioner was present at the time of the 2011 aggravated assault with a deadly weapon, although she remained hidden in a bathroom. The Form I-918 Supplement B and other relevant evidence confirms that the robbery was an aggravated assault with a deadly weapon, a qualifying crime, that it was investigated, and that the petitioner possessed information about the crime and was helpful and remains helpful to the police in the investigation of the qualifying crime. The petitioner has, therefore, established that she is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Furthermore, the statements from the petitioner and the evaluation of psychologist provide probative details of the nature and duration of the petitioner's resultant mental health conditions as well as the serious harm to the petitioner's mental and physical state. The preponderance of the evidence shows that the petitioner has suffered substantial mental abuse as a result of being the victim of a qualifying crime, as required by subsection 101(a)(15)(U)(i) of the Act, and the director's contrary decision is withdrawn.

We also withdraw the director's determination that the petitioner did not possess information concerning the qualifying criminal activity and was not helpful to law enforcement authorities, as the certifying official indicated on the Form I-918 Supplement B that these eligibility criteria were met. Although the petitioner was not present in the room when the 2011 crime occurred, she explained that she heard everything and gave the information she had to the police, and the Form I-918 Supplement B supports these assertions.

#### *Inadmissibility*

The record indicates that the petitioner is inadmissible under subsection 212(a)(6)(A)(i) of the Act for being present in the United States without admission or parole. The petitioner did not indicate when she last entered the United States on her Form I-918 petition or her Form I-192, Application for Advance Permission to Enter as Nonimmigrant. According to her psychologist, the petitioner came to Texas in 2006. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement

that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, as the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192.

*Conclusion*

On appeal, the petitioner has overcome the director's grounds for denial and has established her statutory eligibility for U nonimmigrant classification. Because the petitioner remains inadmissible to the United States, the matter will be remanded to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on the Form I-918, which shall be certified to the AAO for review if adverse to the petitioner.

**ORDER:** The decision of the Vermont Service Center is withdrawn and the matter is returned to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on her Form I-918 petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.