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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: FEB 20 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 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 Vermont Service Center Acting Director (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.

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 that was investigated or prosecuted, and, therefore, also failed to establish substantial abuse, possession of information, and helpfulness to law enforcement authorities related to the investigated or prosecuted 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 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

The regulation at 8 C.F.R. § 214.14(a)(5) states that the term “investigation or prosecution,” as used in section 101(a)(15)(U)(i)(III) of the Act, “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

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.”

#### *Relevant Procedural History*

The petitioner, a native and citizen of Mexico, represents that she entered the United States on July 1, 1991, without inspection, admission, or parole by an immigration officer. The petitioner became a lawful permanent resident of the United States on February 5, 2010. Later that year, the petitioner was arrested and convicted for possession of a controlled substance in violation of California Health and Safety Code section 11377(a), possession of burglary tools in violation of California Penal Code section 466, and forgery (making or passing fictitious checks) in violation of California Penal Code Section 476. Immigration and Customs Enforcement (ICE) subsequently detained the petitioner and issued her a Notice to Appear, placing her in removal proceedings. On June 7, 2013, the petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying incomplete U Nonimmigrant Status Certification (Form I-918 Supplement B). The director issued a Request for Evidence (RFE) of investigation or prosecution of the claimed criminal activity, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. Accordingly, the director denied the Form I-918 U petition, and the petitioner timely appealed. On appeal, the petitioner asserts that the director failed to consider all of the evidence in her determination that the petitioner was not a victim of a qualifying crime.

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<sup>1</sup> 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.

We review these proceedings *de novo*. Upon review of the entire record of proceeding, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Claimed Criminal Activity*

In personal affidavits dated June 3, 2013, and December 20, 2013, the petitioner described running away from home in April 2008, when she was [REDACTED] years old, after an argument with her parents. The petitioner stated that she ran away to a motel in [REDACTED] California, but discovered that she could not afford a room. She recounted that a woman named [REDACTED] and a man named [REDACTED] offered to let the petitioner leave her luggage in their room. The petitioner indicated that later that day when she returned to the room, she was assaulted by [REDACTED] and several other individuals, who threatened her with a gun. The petitioner stated that the individuals, who identified themselves as members of the [REDACTED] street gang, beat her, forced to disrobe, and to smoke a pipe. She indicated that they forced her to become a prostitute, but did not provide probative information regarding any specific forced sexual acts. The petitioner asserted that the individuals holding her hostage were visited by members of [REDACTED] and that she overheard the cartel members telling her captors that she could be sold in Mexico for a lot of money. The petitioner stated that in mid-June one of the captors let her escape and she returned to her mother's house. The petitioner indicated that she was too afraid to tell her family what had happened.

The petitioner stated that she spoke with an undercover gang detective, [REDACTED] of the [REDACTED] County Sheriff's Department, on an unidentified later date, who was undertaking an unrelated investigation. The petitioner recounted that while assisting the detective with his unrelated investigation, she mentioned that [REDACTED] gang members had held her hostage at a motel for six weeks. The petitioner stated that the detective encouraged her to file a police report with the [REDACTED] Police Department, but the petitioner declined.

The Form I-918 Supplement B was signed by "Detective [REDACTED] Gang Detective, [REDACTED] County Sheriff's Department (certifying official), on June 3, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as false imprisonment, hostage, conspiracy to commit any of the named crimes, and under "other," listed criminal threats. However, at Part 3.3., the certifying official did not provide any statutory citations for criminal activity being investigated or prosecuted. Under Part 3.5, the certifying official stated that the petitioner informed him that she was held against her will at a motel in [REDACTED] by members of the [REDACTED] street gang, and that she was held for ransom for drug money owed by her friends. In Part 3.6, the certifying official indicated that the petitioner declined to file a police report.

In response to the RFE, the petitioner provided a an unsigned letter, dated September 30, 2011, from Detective [REDACTED] County Deputy Sheriff, who stated that the petitioner assisted him on three occasions by purchasing narcotics from gang members. However, with respect to the petitioner's incident with the [REDACTED] street gang, Detective [REDACTED] recounted that the petitioner told him that she was familiar with the gang because she had once been held at a motel against her will until some money

was paid for her release, but that the petitioner was not specific as to who was involved in the incident, nor did she provide the detective with details surrounding the event. The petitioner also provided a police report from the [REDACTED] Arizona Police Department, dated February 11, 2013, indicating that the petitioner sent the Department a letter asserting that crimes had been committed against her. The report indicated that an officer was dispatched to interview her, and informed her that she needed to report the crime to the jurisdiction where it occurred. The report states that the case is “inactive” and that it was “turned over to another agency.” In addition, the petitioner submitted what appears to be a call log from the [REDACTED] California Police Department, indicating that the petitioner contacted them on February 11, 2013, to report a “gang crime.” Under description of the offenses, the printout states “NC incident” classified as “miscellaneous.” The printout states the date of the incident as sometime in 2008, and states the location of the incident as “unknown.” The printout does not indicate that an investigation of the incident is or was being undertaken.

### *Analysis*

#### Qualifying Criminal Activity

The director correctly determined that the petitioner did not establish that she was a victim of qualifying criminal activity. To demonstrate eligibility under section 101(a)(15)(U)(i)(III) of the Act, the petitioner must show that authorities are “investigating or prosecuting” the qualifying criminal activity of which she was a victim. The regulation at 8 C.F.R. § 214.14(a)(5), defines “investigation or prosecution” as “the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” Here, the Supplement B, the September 30, 2011, letter from Detective [REDACTED] and the police logs from the [REDACTED] and [REDACTED] police departments do not establish that a qualifying crime was detected, investigated, or prosecuted. The record reflects that the petitioner informally mentioned to Detective [REDACTED] that she had been the victim of criminal activity perpetrated by a street gang, but did not provide him with details regarding the incident or file a police report. The call log from the [REDACTED] Police Department indicates that the petitioner made contact with authorities, but does not show what, if any, specifics the petitioner provided regarding the incident, and whether or not the police department detected or investigated a crime. On appeal, the petitioner asserts that the [REDACTED] Police Department opened an investigation of the incident, and that the investigation is currently open. However, the evidence of record demonstrates only that the petitioner reported a 2008 incident, and does not show that authorities either undertook an investigation or detected that a crime occurred. Further, the Supplement B does not certify that an investigation of the crime of which the petitioner claims she was a victim was ever undertaken.

As the petitioner has not demonstrated that the claimed criminal activity was investigated or prosecuted, she has not established that she is the victim of any 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 cannot 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.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she cannot establish that she possesses information concerning such a crime or activity, as required by section 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 cannot 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.

We further note that beyond the director's decision, the evidence does not establish the petitioner's helpfulness to law enforcement authorities regarding the claimed criminal activity. The Supplement B and letter from Detective [REDACTED] indicate that the petitioner declined to file a police report regarding the incident, and provided minimal information to authorities regarding the claimed crime. The [REDACTED] Police Department call log indicates that the department does not have a specific date or location of the incident on file. The petitioner's assertions, and the detective's confirmation, that the petitioner assisted authorities by purchasing narcotics from gang members on other occasions, does not establish her helpfulness with respect to the specific claimed qualifying criminal activity of which the petitioner states she is a victim. The relevant evidence, therefore, does not establish that the petitioner was helpful to law enforcement regarding the claimed qualifying criminal activity, and petition will be denied on this additional ground.<sup>2</sup>

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<sup>2</sup> 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Eligibility for Nonimmigrant Classification

Beyond the director's decision, we also observe that the petitioner is a lawful permanent resident and is therefore ineligible for U nonimmigrant classification. Section 101(a)(15) of the Act defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of "immigrant" at section 101(a)(15) of the Act.

The record contains no evidence that the petitioner has lost her lawful permanent resident status. Although she was placed in removal proceedings due to her criminal convictions, those proceedings are ongoing. Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.1(p), 1001.1(p). *See also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328. Here, the petitioner's removal proceedings are ongoing and she has not received a final administrative order of removal. Lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. *Id.* at 327 n.1. However, none of those circumstances exist in this case. Consequently, the petitioner remains a lawful permanent resident.

The statute and regulations also do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. *See* sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258. The petitioner is thus ineligible for U nonimmigrant classification.

*Conclusion*

The petitioner has not established that she was the victim of a qualifying crime. Beyond the director's decision, the petitioner has also failed to demonstrate her helpfulness to law enforcement authorities with respect to the claimed qualifying criminal activity. In addition, she remains a lawful permanent resident. For these three reasons, she is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) 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.