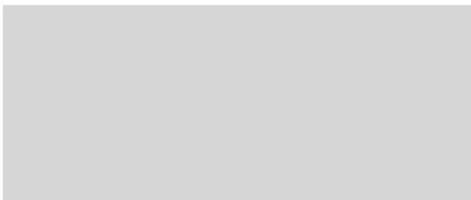


(b)(6)

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: **JUN 03 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 Acting Director, Vermont Service Center (the director), denied the nonimmigrant visa petition. 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 has been the victim of qualifying criminal activity, and therefore could not establish the remaining eligibility provisions. On appeal, the petitioner submits a brief.

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

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.” 8 C.F.R. § 214.14(a)(9).

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

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;
- (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.

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918[.]

* * *

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 citizen of Guatemala who claims to have last entered the United States without inspection on August 3, 1998. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 petition) on September 4, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The director subsequently issued a Request for Evidence (RFE) of, among other things, that the petitioner was the victim of qualifying criminal activity. The petitioner timely responded with additional evidence which the director found insufficient to establish eligibility and denied the Form I-918 petition. The director denied the Form I-192 application based upon the denial of the Form I-918. The petitioner timely appealed the denial of the Form I-918 petition.

We conduct appellate review on a *de novo* basis. A full review of the record, including the brief submitted on appeal, does not establish the petitioner's eligibility.

Claimed Criminal Activity

The Form I-918 Supplement B was signed by [REDACTED] Police Department, [REDACTED] Rhode Island (certifying official), on July 5, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "Witness Tampering," "Related Crimes(s)," and "Other."¹ In Part 3.3, the certifying official referred to "Chapter 21,

¹ The certifying official did not specify a criminal offense in the allocated space after "Other."

§ 28 of Rhode Island General Laws,” the Rhode Island Uniform Controlled Substances Act, 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 a stranger came to the petitioner’s home to claim a suspicious package that was delivered there. The certifying official stated that the petitioner refused to give the package to the stranger and was told that “if she opened the package that she would have problems.” An investigation revealed that the package contained marijuana.

The Certified Crimes are not Qualifying Criminal Activities

At Part 3.3 of the Form I-918 Supplement B, the certifying official listed generally “Chapter 21, § 28 of Rhode Island General Laws” as the criminal activity that was investigated or prosecuted, but did not identify any specific part or section of the Rhode Island Uniform Controlled Substances Act. Although controlled substance crimes are not specifically listed as a qualifying crime or criminal activity at section 101(a)(15)(U)(iii) of the Act, the statute also provides for any “similar activity” to those qualifying 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 certified crime must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question. However, as the certifying official did not specify which section of Rhode Island General Laws was investigated, we cannot make a determination regarding whether the nature and elements of the certified crime is substantially similar to a qualifying criminal activity on the statutory list.

On appeal, the petitioner argues that she is a victim of the qualifying crime of witness tampering because the perpetrator intimidated her family so that he could “complete another crime” (receipt of a controlled substance) and “avoid investigation, arrest and prosecution,” and that the crime of witness tampering is similar to the crime of “intimidation of a witness” in Rhode Island. Although the petitioner claims she was a victim of Rhode Island General Laws (R.I. Gen. Laws) § 11-32-5, intimidation of witnesses and victims of crimes, the certifying official did not list this section of the law as the crime investigated.

Conclusion

The petitioner did not establish by a preponderance of evidence that she was the victim of a qualifying crime or criminal activity. Consequently, the petitioner also cannot meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. The petitioner is therefore ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.