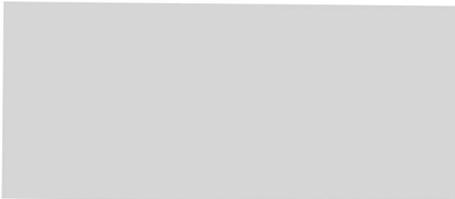


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAY 11 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

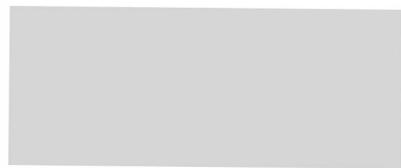
IN RE:

Petitioner: [REDACTED]

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied 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 was the victim of qualifying criminal activity; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; that he was helpful in the investigation or prosecution of qualifying criminal activity; or that 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. court. In addition, the director denied the petition because the petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), had been denied. 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;

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

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).

The eligibility requirements for U nonimmigrant classification are further explicated 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.

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 Togo who claims to have entered the United States on August 24, 1994, pursuant to a valid B-1 or B-2 nonimmigrant 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 June 17, 2013. On March 7, 2014, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered resultant substantial physical or mental abuse. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition on September 4, 2014. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that she was a victim of grand larceny which is substantially similar to extortion, a qualifying crime.

### *Claimed Criminal Activity*

In her June 11, 2013 affidavit, the petitioner recounted that in January 2008, her fiancé called her to inform her that police detectives had come to her door looking for her. The police informed the petitioner that she had been the victim of identity theft and that the criminal perpetrators had used her personal information to buy several properties in New York and to obtain corresponding mortgages on those properties. The mortgages subsequently went into default and the mortgage companies contacted the petitioner as the name on the account to recover the debt owed.

The petitioner submitted a Forms I-918 Supplement B signed by [REDACTED], Bureau Chief, Integrity Bureau of the [REDACTED] New York District Attorney, on March 18, 2013. Mr. [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as "Grand Larceny 1st." In Part 3.3, Mr. [REDACTED] listed "Grand Larceny in the 1st (P.L. 155.42)" as the statute under which the criminal activity was investigated or prosecuted. The Form I-918 Supplement B references an attached letter for additional information about the criminal activity and the petitioner's participation; that letter states that the petitioner was helpful to the investigation whenever requested by investigating authorities.

### *Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

### Grand Larceny in the First Degree under New York Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and incident report from the [REDACTED] District Attorney's Office indicate that grand larceny was investigated. The crime of grand larceny is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated 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 grand larceny offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under New York law, larceny is committed when “[a] person . . . , with intent to deprive another of property or to appropriate the same to himself or to a third person, . . . wrongfully takes, obtains or withholds such property from an owner thereof.” N.Y. Pen. Law § 155.05 (West 2014). Grand larceny in the first degree is committed when the value of the property taken exceeds one million dollars. N.Y. Pen. Law § 155.42. In New York, the definition of grand larceny includes five means by which it may be accomplished. One of the five means by which the grand larceny may be accomplished is by extortion, which is defined as larceny undertaken by someone who “compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear” that someone will be physically injured, property will be damaged, some other crime will be committed, false criminal charges will be brought, a secret will be exposed or publicized, or some other negative consequence will occur. N.Y. Pen. Law § 155.05(2)(e). Grand larceny by extortion is specifically criminalized in NY Pen. Law §§ 155.30(6) (Grand Larceny in the Fourth Degree) and 155.40(2) (Grand Larceny in the Second Degree).

The statute investigated in this case according to the Form I-918 Supplement B was N.Y. Pen. Law § 155.42, Grand Larceny in the First Degree. The arrest warrants and indictment provided state that the individuals identified as participating in the criminal scheme were charged with, among other lesser crimes, Grand Larceny in the First Degree and Grand Larceny in the Second Degree (subsection 1 – value of the property obtained is in excess of \$50,000). The statutes investigated and charged in this case involve taking or withholding money or personal property from another. Although Grand Larceny may include extortion, the statutes named in this case do not involve an extortion element. There is no evidence that the certifying agency investigated an attempted or actual extortion against the petitioner, and the certifying official did not indicate at Part 3.3 that extortion against the petitioner was actually investigated or prosecuted. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that the crime of extortion was investigated or prosecuted.

On appeal, the petitioner cites the section of the Grand Larceny in the Second Degree statute which states that such a larceny may be committed by extortion regardless of the value of the property taken and, as such, qualifies as a “similar activity” to the statutorily enumerated crime of extortion. The petitioner also notes that many of the statutorily eligible crimes do not have a specific state statute with such a title, but that sections of other laws cover the general actions that constitute the crimes listed in section 101(a)(15)(U)(iii) of the Act. The Act does provide for the inclusion of criminal activity that is “substantially similar” to one of the enumerated crimes based on a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). However, as stated above, grand larceny by extortion is codified in two separate sections of the Grand Larceny statute: Grand Larceny in the Fourth Degree and Grand Larceny in the Second Degree. The section of Grand Larceny in the Second Degree that relies upon extortion as its major element is Section 2. The indictment and arrest warrants in the record indicate that the criminal perpetrators were charged under Section 1 of the statute, which states that “[a] person is guilty of grand larceny in the second degree when he steals property . . . [that] exceeds

fifty thousand dollars.” Although certain sections of the Grand Larceny statutes in New York include the crime of extortion, the evidence from the certifying agency does not demonstrate that the sections of the Grand Larceny statutes encompassing extortion were charged in this case. As a result, the petitioner has not demonstrated that the nature and elements of N.Y. Pen Law §§ 155.42 (Grand Larceny in the First Degree) are substantially similar to N.Y. Pen. Law §§ 155.30(6) or 155.40(2) (Grand Larceny by Extortion) or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of 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 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.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to 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 has also failed to 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.

Jurisdiction

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that 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, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Admissibility to the United States

Even if the petitioner had established her statutory eligibility for U nonimmigrant classification, the petition would not be approvable because she remains inadmissible to the United States and her waiver application was denied. 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 petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for such

waiver because her underlying Form I-918 U petition had been denied. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

*Conclusion*

The petitioner has failed to establish that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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.