



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-C-T-

DATE: SEPT. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition because the Petitioner did not establish the following: she has been the victim of qualifying criminal activity; she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity; she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity; and 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. On appeal, the Petitioner submits a statement.

I. 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.

According to the regulation at 8 C.F.R. § 214.14(a)(9), “any similar activity” is used to “refer to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” The regulation at 8 C.F.R. § 214.14(a)(14) states that the term “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.”

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.”

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Jamaica, who claims to have last entered the United States on October 29, 2003 pursuant to a valid nonimmigrant visitor’s visa. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918) with an accompanying Form I-918 Supplement B U Nonimmigrant Status Certification (Form I-918 Supplement B) on March 5, 2013. In response to a Request for Evidence from the Director, the Petitioner submitted an updated Form I-918 Supplement B on March 17, 2014. It is the updated Form I-918 Supplement B that will be

referred to throughout this decision. The Form I-918 Supplement B was signed by [REDACTED], Chief of the Domestic Violence Bureau for the Office of the District Attorney, [REDACTED] New York (certifying official) on March 7, 2014. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as “Related Crime(s)” and “Other” and refers to the included indictment, which lists 14 charges. In Part 3.3, the certifying official refers to New York State Penal Law §§ 240.30 (aggravated harassment in the second degree), 150.15 (arson in the second degree), 150.10 (arson in the third degree), 150.05 (arson in the fourth degree), 150.01 (arson in the fifth degree), 145.00 (criminal mischief in the fourth degree), and the attempt to commit the above listed crimes, 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, she referred to the indictment, and stated that the Petitioner “was the victim of vandalism, aggravated harassment by telephone, and arson. Specifically, [the Petitioner’s] business (an embroidery store) was repeatedly vandalized and ultimately destroyed by an intentionally set fire. [The Petitioner] received dozens of phone calls threatening her business and her life.” At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official again referred to the indictment, and stated that the Petitioner “did not suffer physical injury” but that “her store - the source of her livelihood - was destroyed by an intentionally set fire.”

On December 6, 2013, the Director issued a Request for Evidence (RFE) requesting that the Petitioner submit additional evidence that she was the victim of qualifying criminal activity and that she had suffered substantial physical or mental abuse as a result of qualifying criminal activity. The Director found the Petitioner’s response insufficient to establish eligibility and, accordingly, denied the petition. The Petitioner timely appealed the denial of the Form I-918. The Petitioner states that arson in the second degree is similar to felonious assault and she was, therefore, a victim of qualifying criminal activity.

III. 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.

A. Qualifying Criminal Activity

The [REDACTED] District Attorney’s Office referred to the indictment filed in the [REDACTED] Supreme Court of the State of New York, which listed aggravated harassment, arson, and criminal mischief as the crimes prosecuted. None of the charged crimes are specifically listed as qualifying crimes 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 harassment, arson, or criminal mischief offenses 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. “Arson” is defined by New York Penal Law as “intentionally damag[ing] a building or motor vehicle by starting a fire, and when (a) another person who is not a participant in the crime is present in such building or motor vehicle at the time, and (b) the defendant knows that

fact or the circumstances are such as to render the presence of such a person therein a reasonable possibility.” N.Y. Pen. Law § 150.15; *see also* N.Y. Pen. Law §§ 150.01 (“intentionally damage[ing] property of another without the consent of the owner by intentionally starting a fire or causing an explosion”); 150.05 (“recklessly damage[ing] a building or motor vehicle by intentionally starting a fire or causing an explosion”); 150.10 (“intentionally damage[ing] a building or motor vehicle by starting a fire or causing an explosion.”). “Criminal mischief” is defined as “intentionally damage[ing] property of another person.” N.Y. Pen. Law § 145.00. “Aggravated harassment” is defined, in pertinent part as:

. . .when with intent to harass, annoy, threaten or alarm another person, he or she:

1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or . . .
2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; . . .

N.Y. Pen. Law § 240.30.

The Petitioner stated in response to the Director’s RFE, that assault in the second degree is substantially similar to arson in the second degree. A person commits assault in the second degree under New York law when “with intent to cause serious physical injury to another person, he causes such injury to such person or to a third person . . .” N.Y. Pen. Law § 120.05(1). The Petitioner states that because both statutes contain an element of “intentionally placing a third party in danger” that they are substantially similar to qualify her for U nonimmigrant status. Although the second degree arson statute requires that a “person who is not a participant in the crime [be] present” as the fire is set, it does not contain injury to that person as an element of the crime. N.Y. Pen. Law § 150.15. In contrast, the crime of assault in the second degree contains an element of injury to that third person. N.Y. Pen. Law § 120.05(1). Although both statutes contain an element of the presence of a third party to the crime, the effect or involvement of that third party in the crime is vastly different in arson as opposed to assault. The arson statute focuses on the harm caused to an inanimate object: a building or property or motor vehicle, with the severity of the crime increasing when a person is placed in danger whereas the assault statute focuses on the harm to the person with no element of property damage. N.Y. Pen. Law § 150.15. As a result, the Petitioner has not demonstrated how arson is “substantially similar” to felonious assault.

The Petitioner also likens the crime of attempted assault to the crime of second degree arson, stating that the arsonist knew that she regularly was in her place of business so setting a fire in her store in combination with the threats made to her on previous occasions amounted to an attempt to harm the Petitioner herself. The proper inquiry is not an analysis of the factual details underlying the criminal activity to see what crime or subsection of a statute could have been investigated or prosecuted by the certifying agency, but instead an assessment of the nature and elements of the crime that was actually investigated as compared to the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The proper inquiry is a comparison of the nature and elements of the crimes that were investigated and the

(b)(6)

qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The Petitioner has not demonstrated that N.Y. Pen. Law § 150.15 includes the requirement that an intent to injure a person be present that would equate an investigation of arson under N.Y. Pen. Law § 150.15 to a felonious assault under N.Y. Pen. Law § 120.05 or amount to a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

Here, the evidence in the record does not establish that the criminal offenses of which the Petitioner was a victim are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The Petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

Because the Petitioner did not establish that she was the victim of a qualifying crime or 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 a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the Petitioner could establish that she was the victim of a qualifying crime or criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (USCIS) looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

In her personal statement, the Petitioner recounted that, on March 11, 2011, someone burned an area outside of her embroidery store. On March 23, 2011, someone burned the grill outside of her store. On April 4, 2011, the Petitioner received a call in the early hours of the morning informing her that her store was on fire. The fire destroyed everything in the store, ruining her equipment and merchandise. The Petitioner stated that she had no insurance and no way to reopen the store, so she lost her source of livelihood. She stated that the fire caused her to be "very depressed and stressed out," her blood pressure became elevated, and she started getting headaches.

Psychologist [REDACTED] reported that the Petitioner was referred to him by her primary care physician because of depression. Dr. [REDACTED] stated that the Petitioner was notably distressed throughout their session, reported trouble sleeping, and admitted to suicidal thoughts. Dr. [REDACTED] detailed the economic stresses weighing on the Petitioner since her business closed, including how she was unable to find a job and pay her bills resulting in an eviction and a time being homeless. He noted that she was unable to secure a loan to reopen her business due to her immigration status. Dr. [REDACTED] report does not contain details about the relationship between the crimes of arson and the Petitioner's mental state as opposed to the financial stressors on the Petitioner's mental state. The Petitioner's financial losses are well documented by the record. Although we do not minimize the troubles that the Petitioner experienced when her store was burned down, the overall evidence in the record does not provide sufficient detail to establish that she has suffered resultant substantial

physical or mental abuse. Accordingly, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

D. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of a qualifying crime or 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.

E. 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.

IV. CONCLUSION

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). The Petitioner has not established 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.

ORDER: The appeal is dismissed.

Cite as *Matter of V-C-T-*, ID# 14207 (AAO Sept. 2, 2015)