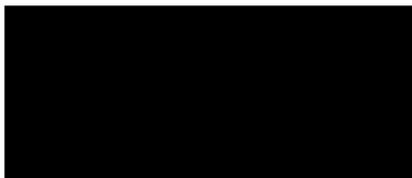


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



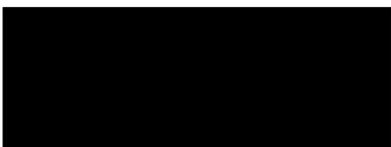
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Date: **OCT 22 2012** Office: VERMONT SERVICE CENTER FILE:

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted and the AAO's prior decision to dismiss the appeal will be affirmed. The petition will remain denied.

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.

Factual and Procedural History

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The director denied the petition because the petitioner did not demonstrate that he was the victim of a qualifying crime or that his victimization had resulted in substantial physical or mental abuse. On appeal, counsel asserted that the crime committed was not only to his sister but to his whole family, and that the petitioner helped the authorities apprehend the perpetrator of the sexual assault against the petitioner's sister.

In our prior decision, we found that the petitioner failed to establish that he was a direct or indirect victim of his sister's sexual assault. Accordingly, we dismissed the petitioner's appeal.

On motion, counsel resubmits the same brief submitted with the previous appeal, and a copy of the I-918 Supplement B with a "Supplement Report" written by [REDACTED]

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As noted in our prior decision, the record indicates that although the petitioner was affected by the sexual assault of his sister and was subpoenaed to testify in the prosecution of the perpetrator, he has not demonstrated that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(iii) of the Act.

U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(4). As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence to Satisfy the Eligibility Requirements. While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007)

In the supplemental report submitted on appeal, the certifying official states that the petitioner and his family are victims of the petitioner's sister's sexual assault, in part, because "they have to live with the trauma and stigma associated with such a violent and embarrassing crime as this." While it is clear that the petitioner and his family have been affected by his sister's assault, the supplemental report fails to establish that the petitioner meets the definition of a victim for purposes of his eligibility for U nonimmigrant status as described at 8 C.F.R. 214.14(a)(14). The supplemental report fails to demonstrate that the petitioner witnessed or was otherwise aware of his sister's assault until after it occurred. Nor does the supplemental report establish that the petitioner is an indirect victim due to his younger sister's incapacity as a minor. The petitioner's evidence on motion fails to overcome our prior determination that the petitioner did not establish that he was the victim of a qualifying crime.

Conclusion

The petitioner has not met his burden of showing that he was the victim of a qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The AAO's prior decision, dated May 22, 2012, is affirmed. The appeal remains dismissed, and the petition remains denied.