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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: **OCT 22 2013**

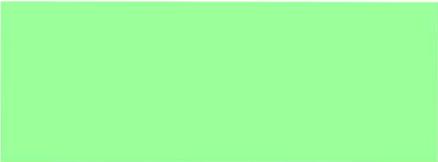
Office: VERMONT SERVICE CENTER

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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is 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 he was the victim of qualifying criminal activity and he consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief, an affidavit from Ms. [REDACTED] evidence of the petitioner's brother's immigration status in the United States, and copies of documents already included in the record.

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[.]¹

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(14) *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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States in June 2002 without inspection. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on November 1, 2011. On November 30, 2012, the director issued a Request for Evidence (RFE) that the petitioner submit evidence that he was the victim of a qualifying crime, that he possessed information concerning the criminal activity, and that he suffered substantial physical and mental abuse. Counsel responded to the RFE with a second Form I-918 Supplement B, and additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that the director erred in denying the petitioner's Form I-918 U petition because he was a victim of the requisite criminal activity, a violation of a protection order.

¹ 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.

Claimed Criminal Activity

In his affidavit, the petitioner stated that after his father was physically abusive to his mother, he helped her move away from him. He recounted that one day when his mother was home alone, his father came by and threatened to kill her and bury her under the house. The petitioner convinced his mother to report his father to the police, and she received a temporary order of protection. The petitioner stated that after his mother received the temporary order of protection, his father violated it by leaving threatening messages on his brother's phone on December 24, 2008. They went to the police, and after the police listened to the voicemail, they filed a police report. The petitioner stated that his father is in Mexico and he is afraid that if he returns to Mexico, he will be harmed by his father.

The second Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Sheriff's Office (certifying official), on December 21, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to Georgia Code Annotated (O.C.G.A.) § 16-5-95, violation of a protection order, 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 between December 24, 2008 and January 12, 2009, the petitioner's father was calling his mother "leaving her messages saying you better answer the phone," in violation of the protection order. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official left it blank.

Victim of Qualifying Criminal Activity

The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In its Preamble to the U visa rule, USCIS stated:

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime.

In her appeal brief, counsel claims that the petitioner is a bystander victim because he suffered an unusually direct injury as a result of the qualifying crime. She states the petitioner "was living with his mother when the qualifying criminal activity occurred," and as a result, he is "under the care of a psychiatrist and has been diagnosed with sever [sic] major depression, generalized anxiety disorder, and post-traumatic stress disorder."

The evidence shows that the petitioner helped his mother obtain a temporary order of protection against his father; and between December 24, 2008 and January 12, 2009, his father violated the order by leaving his mother threatening messages. In a letter dated December 7, 2012, Dr. [REDACTED] a psychiatrist, reports that on December 24, 2008, the petitioner's father left messages on the petitioner's brother's phone threatening to kill their mother's parents who live in Mexico. In her affidavit dated April 17, 2013, Ms. [REDACTED] states that while working as a bilingual advocate, she accompanied the petitioner's mother to her 12-month temporary protection order hearing, and the petitioner and his brother were also in attendance. She claims that the petitioner and his brother were "terrified" of their father. Dr. [REDACTED] indicates that the petitioner has been abused by his father since he was five years old, and the "trauma inflicted has been intense." He diagnosed the petitioner with severe major depression, generalized anxiety disorder, and post-traumatic stress disorder, and stated his emotional distress is "due to the constant abuse he suffered during his childhood and adolescence."

While there may be circumstances where a bystander to a qualifying crime may suffer "unusually direct injuries" as a result of witnessing a violent crime, there is no evidence in the record that the petitioner was the victim of or witnessed the crime committed against his mother, the violation of the protection order. The January 14, 2009 police report regarding the violation of the protection order does not indicate that the petitioner was a witness or victim. In addition, the record establishes that the threatening messages from the petitioner's father were left on the petitioner's brother phone, not the petitioner's phone. The evidence also does not establish that he otherwise suffered an unusually direct injury resulting from the violation of the protection order. Although the new Form I-918 Supplement B identifies the petitioner as a victim of the violation of the protection order, the certifying official did not indicate that the petitioner suffered any injury. The record, including the letters from Dr. [REDACTED] indicate that the petitioner suffered serious emotional and physical harm for many years by his father; however, there are no details regarding the impact of the actual violation of the temporary protection order on the petitioner's well-being. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

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

ORDER: The appeal is dismissed. The petition remains denied.