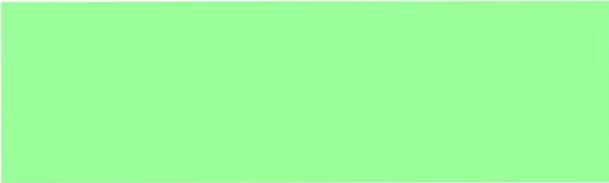


(b)(6)

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: **MAR 06 2014** 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 Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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.

The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity and she 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 statement.

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; . . . sexual assault; abusive sexual contact; . . . stalking; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

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.

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

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

* * *

(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.

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 China who entered the United States on April 1, 2004 without admission, inspection or parole. 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 October 17, 2011. On April 17, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that she suffered substantial physical and mental abuse. The director also requested a statement from the petitioner regarding her victimization and a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) to waive her ground of inadmissibility. The petitioner responded to the RFE with statements and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, on September 28, 2012, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner is the victim of stalking which is a "sexual offense similar to that of attempted rape, sexual assault and abusive sexual contact." He states the petitioner suffered significant trauma because she feared the perpetrator would use force against her, but notes that she was helpful in securing a conviction against the perpetrator.

Claimed Criminal Activity

In her statement, the petitioner recounted that in November 2010, shortly after she and her husband opened a restaurant, a man exposed his penis and masturbated in front of her. The man exposed himself in front of the petitioner on several occasions and she feared that he would rape her. On March 6, 2011, he was arrested by the police. Even though she was "terrified," she testified against the perpetrator and he was convicted and sentenced to five years in jail.

The Form I-918 Supplement B that the petitioner submitted was signed by Deputy State's Attorney [REDACTED] (certifying official), on April 25,

2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as indecent exposure. In Part 3.3, the certifying official refers to Maryland Criminal Code Annotated §§ 11-07 and 6-301, indecent exposure and malicious destruction, respectively, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that the defendant stood outside the victim's carry-out business and masturbated in front of her. When he was asked to leave, he "entered the carry-out and when confronted by the victim's husband shoved and threatened him. The defendant then kicked the front door, shattering the plexiglass insert, frame and neon sign above the door causing approximately \$1000 in damage." The certifying official also indicated that the defendant "had exposed himself and masturbated previously in front of the carry-out." The certifying official left Part 3.6, which asks for a description of any known or documented injury to the petitioner, blank.

Analysis

Indecent Exposure under Maryland Law is Not Substantially Similar to Qualifying Criminal Activity

The crime of indecent exposure 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). On appeal, counsel claims that the petitioner is the victim of stalking which is a "sexual offense similar to that of attempted rape, sexual assault and abusive sexual contact." He indicates that the petitioner feared that an "encounter with [the perpetrator] would end up in his inflicting serious bodily injury to her and/or raping her." Although stalking, attempted rape, sexual assault, and abusive sexual contact are qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act, the certifying official only indicated that the petitioner was the victim of indecent exposure and malicious destruction, and there is no evidence that the certifying agency or any other law enforcement entity investigated stalking, attempted rape, sexual assault, and/or abusive sexual contact inflicted upon the petitioner.² Moreover, counsel does not provide the requisite statutory analysis to demonstrate that the nature and elements of the crimes investigated are substantially similar to any qualifying criminal activity. The petitioner is, therefore, not the victim of the qualifying crimes of stalking, attempted rape, sexual assault, abusive sexual contact or any other 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 such victimization. Even if the petitioner could establish that she was the victim of qualifying criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her victimization, under

² Counsel submitted a printout of the case information from the Maryland Judiciary which indicates two charges of stalking against the defendant but the disposition of those charges is "closed." This printout is not an official court record and the certifying official does not mention investigating or prosecuting the crime of stalking.

section 101(a)(15)(U)(i)(I) of the Act. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, 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 statement, the petitioner claims that she feared being raped by the perpetrator, she "lived in terror" when he was exposing himself to her, and she is afraid of what may happen to her when he is released from jail. She notes that since this incident, she does "not want any man touching [her], even [her] husband," and they have slept in different rooms since February 2011. The petitioner states that this incident brought back memories of when she was smuggled into the United States and was strip searched by the smugglers. She recalls that for about a week, she was forced to watch pornography and was in constant fear of being raped. In his statement, the petitioner's husband claims that the petitioner was severely affected emotionally by the indecent exposure incidents and she is depressed. He states that the petitioner "has been very distant," they do not sleep together anymore, and she is afraid of men.

In his psychological evaluation, [REDACTED] a psychologist, diagnoses the petitioner with post-traumatic stress disorder (PTSD) and major depression, which he notes were caused by the crimes committed against her by the perpetrator. He also reports that this incident has "retriggered thoughts, feelings, and memories about previous life traumas." These previous traumas include two 2006 incidents where men exposed themselves to her, her detainment in Mexico while being smuggled into the United States, and her teenage pregnancy. [REDACTED] also indicates that the petitioner is suffering from the separation from her children in China and she is stressed about the debt owed to her family from when she was smuggled into the United States.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the crimes committed against her. Although [REDACTED] indicates that the petitioner is suffering from PTSD and major depression, he states that her mental health problems are also related to previous life traumas, including her teenage pregnancy, her separation from her children, and her experience with the smugglers. [REDACTED] fails to probatively discuss any permanent or serious harm the incident caused to the petitioner's appearance, health, or physical or mental soundness. The petitioner herself did not mention her depression, PTSD, or how these events have affected her other than noting she does not sleep with her husband anymore. In addition, the Form I-918 Supplement B does not indicate that there was any injury to the petitioner. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that she suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 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 a qualifying crime, 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.

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, 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 a qualifying crime, 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 subsection 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

Although the petitioner was helpful to the [REDACTED] in the investigation of the indecent exposure against her and malicious destruction of her property, she has not demonstrated that the offense of indecent exposure under the Maryland Criminal Code is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offense of which she was the victim is a qualifying criminal activity prevents her from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act.

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.