



U.S. Citizenship
and Immigration
Services

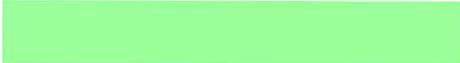
(b)(6)



Date: **MAR 31 2014** Office: VERMONT SERVICE CENTER



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:

SELF-REPRESENTED

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. In addition, the director noted that the petitioner failed to submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On appeal, the petitioner submits a statement and a new Form I-918 Supplement B.

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: . . . unlawful criminal restraint; . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 Guinea who entered the United States on June 5, 2001, on a B-2 nonimmigrant visa. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) on April 11, 2011 with a photocopied Form I-918 Supplement B.¹ The director

¹ The petitioner filed another Form I-918 U petition on January 19, 2010, receipt number [REDACTED] which was denied on October 13, 2010. The petitioner filed an appeal which the director rejected as untimely on May 19, 2011.

issued a Request for Evidence (RFE) that the petitioner submit a properly signed Form I-918 Supplement B with an original signature. The director also requested evidence that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. In response to the RFE, the petitioner submitted additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner submits a new Form I-918 Supplement B and claims that as a result of the robbery, she is a victim of felonious assault and unlawful criminal restraint.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition. The petitioner filed her Form I-918 U petition on April 11, 2011 and was required to submit an original Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). Although on appeal the petitioner submitted a Form I-918 Supplement B, it was not submitted as initial evidence with her Form I-918 U petition.² According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), "[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility" In addition, this Form I-918 Supplement B submitted on appeal, dated March 28, 2012, was not signed by the certifying official within the six months preceding the April 11, 2011 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). As the petitioner failed to submit all required initial evidence with her Form I-918 U petition, her Form I-918 U petition must remain denied. *See* 8 C.F.R. § 214.14(c)(2)(i). Furthermore, even if the petitioner had filed all of her initial evidence timely, she is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

Claimed Criminal Activity

In her statements, the petitioner recounted that on September 6, 2008, she was assaulted and robbed by two people. The male suspect punched her three times in the mouth and the female suspect grabbed her head, pushed her to the ground, and took her purse. The police came to her aid and she was taken to the hospital.

The Form I-918 Supplement B that the petitioner submitted was signed by [redacted] of New York, New York Police Department (certifying official), on March 28, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault, unlawful criminal restraint, and robbery. In Part 3.3, the certifying official refers to New York State Penal Law § 160.10, robbery in the second degree, 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 the petitioner "was approached by unknown [perpetrator]

² The petitioner submitted her appeal on April 2, 2012.

who punched her in the mouth three times, forcibly removing her purse from her person.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner had “broken teeth and minor lacerations to [her] face.”

Robbery under New York Law is not a Qualifying Crime or Criminal Activity

Under New York State Penal Law, robbery in the second degree occurs when a suspect “forcibly steals property” and is “aided by another person actually present”; or when in the commission of the robbery, the suspect or another participant in the crime, “[c]auses physical injury to any person who is not a participant in the crime” or displays what appears to be a firearm; or the stolen property is a motor vehicle. N.Y. Pen. Law § 160.10 (West 2013). The crime of robbery 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 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.

On appeal, other than the petitioner claiming that felonious assault and unlawful criminal restraint are a result of the robbery, she does not address the issue of whether robbery is a qualifying crime at section 101(a)(15)(U)(iii) of the Act and she makes no claim that robbery is substantially similar to any qualifying crime, including felonious assault and unlawful criminal restraint. 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. The certifying official did not indicate on the Form I-918 Supplement B that he or any other law enforcement entity investigated felonious assault or unlawful criminal restraint, and the only crime certified at Part 3.3 of the Form I-918 Supplement B is robbery in the second degree. There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault or unlawful criminal restraint. The petitioner has not shown that any crime other than robbery in the second degree was investigated by the law enforcement agency.

In addition, even though the petitioner claims that the crimes of felonious assault and unlawful criminal restraint occurred during the robbery, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but 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). The petitioner has not demonstrated that the nature and elements of the criminal offense of which she was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault and unlawful criminal restraint. The petitioner is, therefore, not the victim of a any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

Page 7

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 and 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 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 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 subsection 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(c)(2)(i) regarding the submission of required initial evidence. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied. In addition, the petitioner has not established that she was the victim of qualifying criminal activity, that she suffered substantial physical or mental abuse as a result of her victimization, that she possesses information concerning qualifying criminal activity, that she has been helpful to law enforcement authorities, or that the criminal activity violated the laws of the United States or occurred in the United States.

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.

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