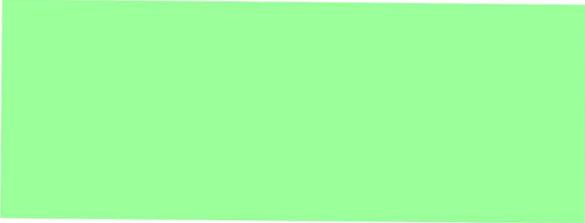


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAY 22 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 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 a direct or indirect victim of qualifying criminal activity or that she had suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. On appeal, counsel submits a brief and 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: . . . kidnapping; . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

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 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 the Dominican Republic who entered the United States on January 5, 1997 without inspection, admission or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on November 15, 2012. On February 15, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that she suffered substantial physical and mental abuse as a result of the victimization. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U 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 she was a direct victim of criminal activity and she suffered substantial physical and mental abuse as a result of her victimization.

Claimed Criminal Activity

In her affidavit, the petitioner recounted that on October 10, 2010, she received a phone call from her cousin who indicated that some men had broken into the petitioner's mother's apartment. The petitioner

immediately called 911, and then she and her daughter took a taxi to her mother's apartment. When they arrived, the police were already there and after approximately 10 minutes, they allowed the petitioner to go to her mother's apartment. When she entered the apartment, she tried to calm down her sisters and she spoke to the police about the incident, translating for her mother. Her mother and sisters explained that a group of armed men invaded the apartment, held them at gunpoint, tied her mother up, ransacked the apartment, and stole her sister's computer. The police apprehended one of the suspects and the petitioner's sister identified him. The petitioner then accompanied her mother to the police station where they both gave statements.

The Form I-918 Supplement B that the petitioner submitted was signed by Director [REDACTED] New York County, New York, District Attorney's Office (certifying official), on September 11, 2012. The certifying official lists the criminal activities of which the petitioner was a victim at Part 3.1 as felonious assault, kidnapping, burglary, and endangerment that occurred on October 13, 2010. In Part 3.3, the certifying official refers to New York State Penal Law §§ 140.30(4) (burglary in the first degree while displaying a firearm), 110/160.10(1) (attempt to commit robbery in the second degree while aided by another person), 110/160.15(4) (attempt to commit robbery in the first degree while displaying a firearm), 135.20 (kidnapping in the second degree), and 260.10(1) (endangering the welfare of a child) 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 in an attachment that on October 13, 2010, "there was an armed unlawful intrusion" into the petitioner's mother's home, while her mother and sisters were there. The petitioner's mother "was in the apartment's kitchen when one intruder entered the apartment through a window near the fire escape, displayed a handgun, and demanded that [the petitioner's mother] opened [sic] the door." When the petitioner's mother refused to open the door, the initial intruder opened the door, allowing at least three other intruders to enter the apartment. "One or more of the intruders tied up [the petitioner's mother] with zip-tie plastic ties and then covered her head; whereupon the intruders set out to search and ransack the apartment." One of the intruders entered the petitioner's sisters' bedroom and ordered them "to get down, with the threat that if they complied, nobody would die." The intruders searched and ransacked the apartment but fled when the police arrived. The petitioner called 911 "while the home invasion was in progress" which "interrupted the crime." In the attachment, Director [REDACTED] did not provide any information regarding any injuries, physical or mental, to the petitioner, other than stating that while under "great stress," the petitioner "made a prompt and panicked call for police assistance while the home invasion was in progress."

Analysis

Burglary and Endangerment under New York Law are Not Substantially Similar to a Qualifying Crime or Criminal Activity

The New York Police Department arrest records and court records from the Criminal Court of the City of New York, County of New York, New York, indicate that violations of New York State Penal Law §§ 140.30(4) (burglary in the first degree while displaying a firearm) and 260.10(1) (endangering the welfare of a child) were investigated, along with other violations. The crimes of burglary and endangerment are not 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 battery 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). Counsel provides no statutory analysis of the nature and elements of burglary and endangerment to show that they are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

The Petitioner is not a victim of Kidnapping or Felonious Assault

In his appeal brief, counsel asserts that the petitioner was a victim of felonious assault because she was in the “zone of danger at the time of the felonious assault, kidnapping and armed home invasion” against her mother. He claims that since the petitioner is an immediate family member of the victims of the crimes, she is a direct victim that has suffered substantial emotional and psychological harm. Although the crime of felonious assault is listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the record does not establish that felonious assault was investigated or prosecuted by the certifying agency in this case. The certifying agency must indicate and certify on the Form I-918 Supplement B that the petitioner was “a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i). While the certifying official indicated that the petitioner was the victim of felonious assault, the only crimes certified as investigated or prosecuted were burglary, attempt to commit a robbery, kidnapping, and endangering the welfare of a child. The record contains no evidence that the certifying official or any other law enforcement entity investigated a crime of felonious assault against the petitioner.

Counsel also claims that the petitioner is a victim of kidnapping, and in the Form I-918 Supplement B, the certifying official indicated that its agency investigated and/or prosecuted a violation of New York State Penal Law § 135.20, kidnapping in the second degree. 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.

Counsel claims that even though the petitioner was seven blocks away when the crimes were occurring, “she suffered ‘direct and proximate harm’ as a result of this qualifying criminal activity.” The “fear, helplessness and despair that [she] felt at that moment was intense and overwhelming. She was, in effect,

witnessing the crime in real time.” The petitioner states she had “feelings of panic, fear,” “dread,” and “helplessness.” She claims that she was a victim of this criminal act, because the suspects made her “feel helpless and vulnerable during the moments of the attack” and she is still “bearing the burden of this crime” because she is supporting her mother and sisters. In her statement, Ms. [REDACTED] a licensed social worker, reports that according to the petitioner, she has experienced “traumatic stress in the wake of her mother’s assault” and “in encouraging her mother to cooperate with law enforcement on the case.” She states the petitioner accompanied her mother to every appointment at the District Attorney’s Office and has taken over childcare duties of her two younger sisters. Ms. [REDACTED] indicates that the petitioner presented with symptoms of major depression and anxiety, and she suffers from hyper-vigilance, exaggerated startle-response, nightmares, and frequent crying spells. She also indicates that the petitioner is suffering from assuming “too many responsibilities at one time: responsibilities to provide care for her family, to serve as the sole-breadwinner in her household, and to support her mother as she testified” against the suspects. She states the petitioner “suffered significant emotional harm as a result of” the crime and taking over all the responsibilities in her home, but she “has made progress in addressing the psychological trauma she has endured.”

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 witness to the crime committed against her mother and sisters. A New York City police interview report dated October 18, 2010 indicates that the petitioner was at home when she received a call, stating that her mother was being robbed so she called 911, but she had no “additional information as to this robbery.” The petitioner makes no claim to having witnessed her mother and sisters being robbed, and the evidence in the record, including the police reports and criminal court documents, do not indicate that she was a witness to or victim of the October 13, 2010 crimes committed against her mother and sisters. We recognize that the petitioner has been emotionally impacted by the events that occurred to her mother and siblings, and has assumed more family responsibilities since this crime occurred; however, the submitted evidence does not establish that she was kidnapped or that she was a bystander who suffered an unusually direct injury as a result of witnessing the crimes committed against her mother and sisters. Furthermore, as the direct victims’ daughter/sister, the petitioner cannot qualify as an indirect victim based solely on her familial relationship to her mother and sisters. The regulation limits indirect victims to certain immediate family members of direct victims of murder or manslaughter or who have been rendered incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i). Although the Form I-918 Supplement B identifies the petitioner as a victim, the certifying official did not indicate that the petitioner suffered any physical or mental injury. The petitioner has, therefore, failed to establish that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner has failed to establish that she was the victim of qualifying criminal activity, she has not established that she suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, we shall not further address this issue.

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 she 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.