



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 18 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that he had suffered substantial physical or mental abuse as a result of having been the victim of a qualifying criminal activity. The petition was denied accordingly. On appeal, counsel submits a brief and additional evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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“The term ‘any similar activity’ refers to 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).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States on January 6, 2004 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on October 21, 2010. The director determined that the petitioner did not establish that he had suffered substantial abuse as a result of being the victim of qualifying criminal activity. On March 2, 2011, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The petition was denied accordingly.

On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he has suffered from depression as well as monetary loss as a result of his victimization from the crimes of racketeering and practicing law while disbarred.

Claimed Criminal Activity

In his personal statement, the petitioner recalled that in February 2006, he and his family sought out the immigration services of an attorney in order to secure their lawful permanent resident status in the United States. The attorney filed paperwork on the family’s behalf, and the petitioner paid the attorney \$4,000 in cash. After the immigration interview, the petitioner did not hear from the attorney for several years. On October 30, 2009, the petitioner learned that his and his family’s applications for permanent residence had been denied and that they had been placed in removal proceedings. The petitioner contacted his attorney who told him he could help him if the petitioner paid him \$4,500. The petitioner did not pay him, and eventually reported his case to a law enforcement agent who was investigating the attorney for fraud. The petitioner and especially his wife are depressed and they fear being forced to leave the United States.

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In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by Assistant State Attorney [REDACTED] of the [REDACTED] State Attorney's Office, [REDACTED] County, Florida (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim of at Part 3.1 as "other," and then listed "Racketeering." At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as Florida Statute (Fla. Stat.) sections 895.03(3) (racketeering) and 454.31 (practice while disbarred or suspended). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner's lawyer unlawfully conducted an immigration business and illegally obtained hundreds of thousands of dollars from more than 50 clients. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner and his family suffered financial loss of approximately \$4,000 and that as a result of the denial of their applications, the family is currently in deportation proceedings.

Analysis

The Petitioner is Not a Victim of Qualifying Criminal Activity

Beyond the director's decision, the record does not show that the petitioner was the victim of qualifying criminal activity.¹

Under the Florida Penal Code, racketeering is described as follows, in pertinent part:

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

Fla. Stat. Ann. § 895.03(3) (West 2013).

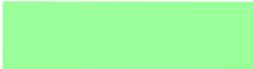
Racketeering is defined as, in pertinent part:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

* * *

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).



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- 39. Section 836.05, relating to extortion.
- 40. Chapter 837, relating to perjury.
- * * *
- 42. Chapter 843, relating to obstruction of justice.

Fla. Stat. Ann. § 895.02 (West 2013).

Under the Florida Penal Code, practicing law while disbarred or suspended is prohibited:

Any person who has been knowingly disbarred and who has not been lawfully reinstated or is knowingly under suspension from the practice of law by any circuit court of the state or by the Supreme Court of the state who practices law in this state or holds himself or herself out as an attorney at law or qualified to practice law in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. Ann. § 454.31 (West 2013).

The particular crimes that were certified 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). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Though the Florida definition of racketeering includes some of the qualifying crimes, it also encompasses several crimes that are not at all similar to any of the qualifying crimes and the certifying official does not specify which subsection of the racketeering activity statute was investigated or prosecuted. The evidence in the record fails to establish that the criminal offenses of which the petitioner was a victim, racketeering and practicing law while disbarred, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including witness tampering, perjury, or obstruction of justice. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria

The petitioner’s failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity. Accordingly, the petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

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Substantial Physical or Mental Abuse

Even if the petitioner had been the victim of a qualifying criminal activity, the relevant evidence fails to establish that he suffered any resultant substantial physical or mental abuse. The regulation at 8 C.F.R. § 214.14(a)(8) defines *physical or mental abuse* as: “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” The regulation at 8 C.F.R. § 214.14(b)(1) states, in pertinent part:

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[.]

The record contains the petitioner's April 8, 2011 declaration as well as a social worker's evaluation, dated October 11, 2010. In his declaration, the petitioner stated that he and his wife are depressed and that they live in a constant state of tension and fear. The petitioner does not want to return to Mexico because he and his family have adapted to life here in the United States, and Mexico is dangerous and there are fewer opportunities there for them.

The social worker's report was prepared by [REDACTED] (“the social worker”), and was based on one interview with the petitioner and his family. According to the social worker, the petitioner and his family were victimized by an attorney who jeopardized their immigration status. The social worker noted that the petitioner experienced worry and inability to sleep for several months when the family learned about the implications of their former attorney's actions on their immigration status. She also indicated that she is concerned that if the petitioner's wife returns to Mexico and becomes more depressed, the petitioner would suffer from having to take on additional responsibility at home and increased stress. The rest of the report relates to the petitioner's wife and the hardship the family would face if they must return to Mexico. The social worker did not diagnose the petitioner with any mental illness.

As stated previously, on the Form I-918 Supplement B, regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner and his family suffered financial loss of approximately \$4,000 and as a result of the denial of their applications, the family is currently in deportation proceedings.

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On appeal, counsel submits that the petitioner and his family have suffered because they are now exposed to deportation or removal which is a severe consequence, as well as financial loss. Counsel submits a letter from [REDACTED] an investigator with the State Attorney's Office of the [REDACTED] judicial district of Florida, in which he notes that the petitioner has suffered monetary loss and personal harm relating to his family's immigration status. Counsel also submits a letter from his family friend, [REDACTED] in which she states that because of their former attorney's actions, the petitioner and his family are afraid of the future and his family's potential deportation to Mexico.

A full review of the record fails to demonstrate that, even if the petitioner had established that he was the victim of qualifying criminal activity, he suffered resultant substantial physical or mental abuse. Neither the petitioner nor the social worker describe any physical abuse that the petitioner has suffered due to his victimization. Rather, the petitioner claims that he has suffered mental abuse and his claim shall be evaluated on this basis only. The evidence in the record shows that the petitioner has suffered monetary losses and that he is concerned about his family's well-being if they are removed to Mexico. In his declaration, the petitioner describes the emotional distress he experiences when he thinks about what has happened to him and how it has affected his opportunity to stay in the United States in the future. In the social worker's report, the social worker noted that the petitioner experienced anxiety over the possibility of being removed from the United States, but she did not diagnose him with any mental health condition. We recognize the petitioner's fear about his future status in the United States and do not discount how those emotions have affected his life. However, the evidence does not contain probative details of the harm the petitioner claims to have suffered. While he recounts that he has been negatively affected and suffered financial losses, the petitioner has not provided any further information or other evidence that would indicate that any abuse he suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner has not established that he was the victim of a qualifying crime, or that he suffered resultant physical or mental abuse that was substantial under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), and as required by section 101(a)(15)(U)(i)(I) 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 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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