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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

b14

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER Date:

DEC 06 2010

IN RE:

Petitioner:

[Redacted]

PETITION:

Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(i)

ON BEHALF OF PETITIONER:

[Redacted]

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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with the fee of \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

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.

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 denied the petition because the petitioner did not establish that he had been the victim of a qualifying crime or criminal activity, as set out at section 101(a)(15)(U)(iii) of the Act, and consequently could not establish the remaining statutory eligibility requirements which all include that the crime is a qualifying crime or criminal activity.

On appeal, counsel submits a brief.

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; 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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

* * *

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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.”

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

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or

any similar activities in violation of Federal, State or local criminal law of the United States: 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. 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.

Facts and Procedural History

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Ukraine. He entered the United States using a false passport and visa on or about April 12, 1998. The petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification on or about July 15, 2005. U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action on June 6, 2006 as a derivative. The interim relief was extended with the last extension in the record valid from September 23, 2010 to September 22, 2011. The petitioner filed a Form I-918, Petition for Nonimmigrant U Status, on February 15, 2008 along with a copy of the U Nonimmigrant Status Certification Form that the petitioner had previously submitted in his request for interim relief. The U Nonimmigrant Status Certification Form was signed by [REDACTED], Assistant District Attorney, Nassau County District Attorney's Office, Mineola, New York, dated January 19, 2005. [REDACTED] identified the criminal activity investigated as violations of: section 170.25 New York State Penal Law – Criminal Possession of a Forged Instrument in the Second Degree; and section 190.65(1)(b) of the New York State Penal Law – Scheme to Defraud in the First Degree.

On May 30, 2009, the director issued a Request for Evidence (RFE). Counsel for the petitioner responded to the RFE on July 14, 2009. The director found the petitioner's response insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition, and the petitioner timely appealed.

The Offense of Which the Petitioner was a Victim

The petitioner did not provide an initial statement but the record included his wife's July 12, 2005 statement, in which she indicated that in November of 1999 she and her husband traveled to New York to meet with an attorney, [REDACTED], regarding their immigration status. The petitioner's wife also indicated that [REDACTED], when hearing about their immigration situation, told them that her partner, [REDACTED], knew how to help them but that it was a difficult case and would cost \$20,000. [REDACTED] reduced the fee to \$15,000 because she felt sorry for the petitioner's wife who was pregnant. The petitioner and his wife paid the money with a check made out to [REDACTED], although they had never met or talked with [REDACTED]. The petitioner's wife indicated further that once they

paid the money, ██████████ told them that their names had been entered into the government system and they were now in the United States legally.

The petitioner's wife noted that she had heard about "an amnesty program" and asked ██████████ if she could get a green card through this program, but that ██████████ told her that she could not get a green card through amnesty. In October 2000, after providing copies of birth certificates, the couple's marriage certificate, diplomas, and labor records, the petitioner's wife indicated that she and her husband received a packet from the "government" informing the couple that they had won the green card lottery. ██████████ filled out the forms for them, wrote a letter in March 2001 informing the petitioner's boss that the couple had won the green card lottery, and in June 2001, the couple paid for medical exams after receiving the government medical forms in the mail. The petitioner's wife reported that on April 18, 2002 she and her husband met ██████████ for what they were told was an interview with an Immigration and Naturalization Service (INS) official. The petitioner's wife reported further that they met with a woman in the waiting area and were questioned using ██████████ as an interpreter, and about a half an hour later, ██████████ showed the couple that they had stamps in their passport. ██████████ assured them that these stamps were temporary evidence of their green cards. In August 2002, the couple went to another INS office where ██████████ showed their passports to someone at a window and obtained fingerprint forms. After providing photos and fingerprints, ██████████ told the couple that they would receive cards to put in their passports in about two weeks and in 24 business days they would receive their social security cards.

The petitioner's wife stated that ██████████ arranged for the couple to meet at the Social Security Office on several occasions and on one of the occasions, ██████████ told the petitioner's wife that she could get a driver's license. However, when the petitioner's wife went to the Department of Motor Vehicles in New Jersey and showed her passport, she was told that she did not have a green card. The petitioner's wife stated further that in the spring of 2003, she decided to see the attorney who had taken care of her aunt's will and that attorney called ██████████ partner, who indicated that ██████████ was not an attorney but had pretended to be. The secretary of the petitioner's new counsel took the petitioner and his wife to see the assistant district attorney, ██████████, in New York.

In a July 14, 2009 personal statement in response to the director's RFE, the petitioner stated his belief that he had been a victim of criminal activity that is substantially similar to extortion. The petitioner indicated that he and his wife were scammed by ██████████ who stole \$15,000 from them by pretending to be a lawyer. The petitioner stated further that ██████████ abused her power by pretending to be an attorney and stealing their money through intimidation and coercion. The petitioner indicated that ██████████ threatened to withdraw their case if they did not buy life insurance, so they did so. The petitioner does not provide any further detailed testimony regarding the alleged intimidation and coercion performed by ██████████.

██████████ provided an attachment to the Form I-918 Supplement B signed on January 19, 2005, in which he indicated that the criminal activity involved included possible violations of section 170.25 NYS Penal Law and section 190.65(1)(b) NYS Penal Law. ██████████ also noted his opinion that

these laws fall within or are similar to the list of offenses set out in section 101(a)(15)(U)(iii) of the Act. [REDACTED], however, does not identify to which qualifying crime(s) the certified crimes are substantially similar. [REDACTED] further noted that the criminal activity occurred from on or about October 2, 2000 through on or about April 18, 2002 and involved the possession of forged documents purportedly from the United States Department of State National Visa Center, Portsmouth, New Hampshire; forged passports purportedly authorized and approved by the INS; and the utilization of INS facilities in Garden City, New York and Manhattan, New York. The record also included evidence that [REDACTED], also known as [REDACTED], was convicted of violating section 170.25 and section 190.65(1)(b) of the New York State Penal Law.

The record shows that the crimes investigated were violations of section 170.25 New York State Penal Law – Criminal Possession of a Forged Instrument in the Second Degree; and section 190.65(1)(b) of the New York State Penal Law – Scheme to Defraud in the First Degree; crimes that are not specified 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 relevant evidence in this matter fails to demonstrate that either “criminal possession of a forged instrument in the second degree” or “scheme to defraud in the first degree” is a crime that is substantially similar to any of the statutorily enumerated crimes.

On appeal, counsel asserts that the criminal activity cited on the law enforcement agency certification is substantially similar to the qualifying crime of extortion and that the petitioner has suffered substantial physical and mental abuse as a result of qualifying victimization. Counsel avers that crimes involving false pretenses and crimes involving larceny are considered similar in nature and that the crime of extortion, which falls under the larger definition of larceny, as well as the crime of scheming to defraud in the first degree, are similar activities as the underlying elements belong to the same family of crime. Counsel contends that the two crimes of criminal possession of a forged instrument and scheme to defraud, in combination are substantially similar to extortion because they involve taking property resulting in various forms of harm to the victim.

New York law defines the offense of criminal possession of a forged instrument in the second degree as:

A person is guilty of criminal possession of a forged instrument in the second degree, when with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10.

Section 170.10 includes, among other instruments: a public record; or an instrument filed or required or authorized by law to be filed with a public office or public servant; or a written instrument officially issued or created by a public office, public servant or governmental instrumentality.

New York law defines the offense of scheme to defraud in the first degree as:

A person is guilty of a scheme to defraud in the first degree when he: (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.

Counsel's claim that the petitioner was the victim of a crime similar to extortion is not supported by the record. While [REDACTED] indicated his belief that criminal possession of a forged instrument and scheme to defraud in the first degree fall within or are similar to the list of offenses set out in section 101(a)(15)(U)(iii) of the Act, he provided no statutory citation to any offense similar to extortion that was being investigated or prosecuted. The court records also do not identify extortion as the alleged crime. The nature and elements of the crimes of criminal possession of a forged instrument and scheme to defraud are not substantially similar to extortion in the State of New York. Although New York does not have a specific crime of extortion, it does define larceny by extortion at section 155.05(e) as follows:

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (i) Cause physical injury to some person in the future; or
- (ii) Cause damage to property; or
- (iii) Engage in other conduct constituting a crime; or
- (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
- (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Federal law defines extortion at 18 U.S.C. § 1951(a)(2) and indicates that extortion requires that the victim's property be obtained through the victim's consent, which was "induced by a wrongful use of actual or threatened force, violence, or fear, or under color of official right." The nature of criminal possession of a forged instrument and scheme to defraud do not include the element of instilling fear within the victim that if he or she does not deliver the property, the perpetrator will cause injury to a person, cause damage to property or will engage in other conduct constituting a crime. Neither do the criminal violations of which the perpetrator in this matter was investigated, prosecuted, and convicted include the element of instilling fear that if the property is not delivered, the other acts listed in the New York statute defining larceny by extortion will be implemented. Although counsel implies that the perpetrator in this matter instilled fear in the petitioner that was calculated to harm him materially, the facts do not support this assertion. In this matter, the perpetrator, ██████████, requested payment for her services and the petitioner voluntarily paid her in order to obtain immigration services. Although ██████████ services were not performed legally, but rather under false pretenses, the record does not show that ██████████ either implicitly or explicitly threatened the petitioner. The infliction of commercial or monetary harm using false pretenses is not similar to making threats of harm or injury to compel certain action or inaction, an element that is central to the crime of extortion.

We recognize that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated ██████████ for extortion or any other crime listed in section 101(a)(15)(U)(iii) of the Act. As ██████████ has been convicted and sentenced, the relevant evidence also contains no indication that the certifying agency intends to investigate or prosecute ██████████ for extortion in the future. The offenses identified in this matter, criminal possession of a forged instrument and scheme to defraud, are not similar to the qualifying offense of extortion, because the nature and elements of these offenses are not substantially similar. Accordingly, the petitioner has not established that the offense of which he was a victim constituted qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that the offense of which he was a victim constituted qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the offense of which the petitioner was a victim was considered qualifying criminal activity, the record does not show that the petitioner suffered substantial physical or mental abuse as a result.

As referenced above, the petitioner did not provide an initial statement. The initial record did include a November 18, 2005 evaluation prepared by ██████████ based on two sessions with the

petitioner and his wife totaling six hours. [REDACTED] determined that the petitioner's signs and symptoms were consistent with a diagnosis of Major Depressive Disorder. [REDACTED] noted that the petitioner's depression was a direct consequence of the loss of his and his wife's immigration case due to the deception and fraud they experienced with [REDACTED]. In the petitioner's July 14, 2009 statement submitted in response to the director's RFE, the petitioner claimed that he suffered substantial mental abuse as a result of being a victim of criminal activity, but he does not provide any further information regarding his current physical and mental state. The petitioner does not provide any further information 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).

We do not discount the depression that the petitioner has suffered as a result of being unable to obtain legal status in the United States. Yet even if the loss of his immigration case may be attributed to the deception and fraud perpetrated by [REDACTED] actions, the petitioner identifies no specific physical or mental abuse that he suffered as a direct result of [REDACTED] offense. He does not describe in probative detail the circumstances of his current physical and mental health. [REDACTED] evaluation of the petitioner is based on two interviews conducted in 2005, more than five years ago. There is nothing in the record from either the petitioner or [REDACTED] that shows that the petitioner obtained psychological counseling or other help to address his mental condition. Apart from the petitioner's brief statement in 2009, the record contains no other recent information regarding any physical or mental abuse suffered by the petitioner as a direct result of the reported non-qualifying offenses. Accordingly, the petitioner has not as established the requirement of section 101(a)(15)(U)(i)(I) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I).

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that she possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II).

Helpfulness to Law Enforcement

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his petition is based, as required by section 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Qualifying Criminal Activity in Violation of U.S. Laws

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that the qualifying criminal activity violated the laws of the United States or occurred in the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

Although the petitioner was helpful in the investigation of the perpetrator's violations of section 170.25 New York State Penal Law – Criminal Possession of a Forged Instrument in the Second Degree; and section 190.65(1)(b) of the New York State Penal Law – Scheme to Defraud in the First Degree, these offenses are not qualifying crimes or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that the perpetrators were investigated or prosecuted for any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that he meets any of the statutory eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for U nonimmigrant classification and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.