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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**

D14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 07 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) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

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 \$630 fee. 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 failed to establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, the petitioner contends through counsel that he was the victim of the qualifying crimes of extortion and blackmail. *See Brief in Support of Appeal*. The petitioner also submitted a supplemental police report. *See Offense Report Supplement 1*, dated June 10, 2010.

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[.]

“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).

Under section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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 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).

Pursuant to the regulations, a petitioner must file a Form I-918, Petition for U Nonimmigrant Status, to request U nonimmigrant classification. 8 C.F.R. § 214.14(c)(1). The Form I-918 must be accompanied by certain supporting documentation or “initial evidence,” including a “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.” 8 C.F.R. § 214.14(c)(2)(i). The Form I-918 Supplement B 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.

Id.

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 record reflects that the petitioner is a native and citizen of Venezuela, and [REDACTED]. He was admitted to the United States as a B-1 visitor on February 21, 1998. The petitioner states that he was the victim of an immigration scam in 2005 committed by suspect [REDACTED] who claimed to be an immigration lawyer and a pastor. The petitioner claims that [REDACTED] charged him \$4,700 to provide immigration services, and then failed to perform the services promised. *See Form I-918 Supplement B*, dated Feb. 12, 2010; *Port St. Lucie Police Department Incident Report*, dated Feb. 2, 2010. The petitioner states that when he found out that the suspect was committing fraud, the suspect told him that “the curse of God would fall on [him]” and he would be deported with his family if he complained. *Offense Report Supplement 1*. The petitioner states that he and his family suffered mental abuse as a result of the multiple deceptions, and that he was deeply hurt when he realized that the suspect used him and his religious status as “bait to attract innocent people so that they would believe in [the suspect].” *Sworn Statement of [REDACTED]* dated Sept. 11, 2008. The petitioner filed an initial police report on February 2, 2010, which he supplemented on June 10, 2010.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on October 20, 2008. On December 10, 2009, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit a law enforcement certification and additional evidence in support of the petition. The director issued a second Request for Evidence on March 11, 2010. The petitioner responded to both requests with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director denied the petition, and the petitioner filed a timely appeal.

Analysis

The petitioner’s law enforcement certification indicates that the petitioner was a victim of criminal activity involving extortion, an offense listed in the statute as a qualifying crime. *See* section 101(a)(15)(U)(iii) of the Act; *Form I-918 Supplement B*, Part 3.1. However, the petitioner also must establish that the certifying agency is or was investigating or prosecuting the qualifying criminal activity of which he is a victim. *See* Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Here, the law enforcement certification shows that the certifying agency is or was investigating or prosecuting the crime of making a false statement to obtain property or credit under Florida Statute Section 817.03, which is not a statutorily enumerated criminal activity. *See Form I-918 Supplement B*, Part 3.3; Section 101(a)(15)(U)(iii) of the Act.

The petitioner contends that the crime of making a false statement to obtain property or credit is substantially similar to the enumerated crimes of extortion and blackmail. *See Brief on Appeal* at 1-2. This contention lacks merit.

Florida Statute Section 817.03 provides in pertinent part:

Any person who shall make or cause to be made any false statement, in writing, relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree . . .

Florida has a separate criminal provision covering threats and extortion. Section 836.05 of the Florida Statute provides in pertinent part:

Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, shall be guilty of a felony of the second degree . . .

A review of the nature and elements of these two crimes indicates that the offense of making a false statement to obtain property or credit, which includes a fraudulent intent to obtain property, is not substantially similar to the crime of extortion, which includes an intent to obtain money or pecuniary advantage or to compel a person to act or refrain from acting against his or her will by way of a malicious threat to harm another. Although counsel contends that the suspect used coercive persuasion to get money from the petitioner and to force him to behave in an involuntary manner by the use of threats, *see Brief on Appeal* at 1, the record contains no evidence that law enforcement ever investigated or prosecuted the alleged threats. Additionally, because the law enforcement certification does not indicate that the petitioner was a victim of a criminal activity involving blackmail, the petitioner cannot establish that the certifying agency is or was investigating or prosecuting that qualifying criminal activity. 8 C.F.R. § 214.14(c)(2)(i). Accordingly, the petitioner failed to establish that he was a victim of a qualifying criminal activity that was investigated or prosecuted by a certifying agency, as required by section 101(a)(15)(U)(i)(III) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

Conclusion

Although the petitioner was the victim of an immigration scam, and he has been helpful in the investigation or prosecution of a suspect for making a false statement to obtain property or credit under Florida law, he has not established that he was a victim of a qualifying criminal activity that was investigated or prosecuted by a certifying agency. Accordingly, the petitioner has not demonstrated that he meets the statutory eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.