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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**



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FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 13 2010

IN RE:



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:

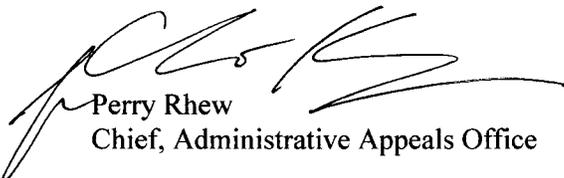


INSTRUCTIONS:

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 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 a 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 service center director denied the 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) 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 on the basis of his determination that the petitioner had 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, counsel submits an argument made on the Form I-290B, Notice of Appeal.

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) prescribes, in pertinent part, the following:

(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 [U.S. Citizenship and Immigration Services]. 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 definition:

- (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.

- (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who entered the United States without inspection in or around March 2005. He filed the instant Form I-918 on June 9, 2008. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on February 16, 2010. Counsel filed the instant appeal on March 12, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.

Victim of Qualifying Criminal Activity

The first issue before the AAO on appeal is whether the petitioner has demonstrated that he was a victim of a qualifying crime or criminal activity. The Form I-918, Supplement B (the "law enforcement certification"), which was signed by [REDACTED] (the "certifying official") of the Detroit, Michigan Police Department on May 14, 2008, indicates that the petitioner was the victim of criminal activity involving, or similar to, blackmail and extortion. The certifying official did not complete part 3, item 3 the law enforcement certification, which requests the statutory citation for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted. However, at several other portions of the law enforcement certification he referenced the police report regarding the criminal activity,¹ which stated that the petitioner was the victim of "fraud (larceny) by conversion."

Although the statutory citation was not provided by the certifying official, it appears as though the criminal activity described by the certifying official falls under section 750.362 of the Michigan Penal Code (larceny by conversion) which states, in pertinent part, the following:

Larceny by conversion, etc.—Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny. . . .

¹ Detroit Police Department Crime Report, Case [REDACTED]

Although the police report discussed victimization experienced by the petitioner, his father, his sister, and other individuals, it is only the criminal activity of which the petitioner was himself a victim that is at issue here. According to the police report, J-H-² obtained a visa on behalf of the petitioner and, when the petitioner reported to work for the company that sponsored the visa, he was told that his services were no longer needed. J-H- told the petitioner that this would not change his immigration status. J-H- later contacted the petitioner to tell him that his status would soon expire and that he would need to pay an additional fee if he wanted to remain in the United States. J-H- also told the petitioner to ask his relatives in Mexico whether they wished to work in the United States and, if so, to send money.

In his undated letter, the petitioner stated that J-H- promised his father six H-2B visas in exchange for \$11,100. After agreeing to the deal, the petitioner and his father departed the United States for Mexico, and waited for the visas to be issued. Two of the six promised visas were issued, and the petitioner and his father re-entered the United States with their H-2B visas. As noted, they were told by the sponsoring entity that their services were no longer needed, and J-H- told them this change in circumstances “was not a big deal.” Shortly before the petitioner and his father’s visas were to expire, J-H- told them he would need more money in order to extend their stay in the United States, and he also told them that he could get visas for others. They returned to Mexico, and J-H- told the petitioner’s sister, who was still living in the United States, that anyone wanting a visa should send \$1,000. The petitioner stated that his father sent a total of \$26,000, which was to cover the costs of 26 H-2B visas. Although the petitioner’s sister delivered the money to J-H-, the visas were never issued. The petitioner stated that when his sister asked J-H- for an update on the situation, J-H- showed her a gun and told her to stop bothering him. She inquired again the following month, and J-H- told her that if she did not stop bothering him he would call USCIS. The petitioner stated that he and his father returned to the United States in 2005, that his father spoke with a staff member of a Michigan state legislator, and that an investigation was started. The petitioner stated that he and his parents were arrested by immigration authorities in 2007, and that he knows it was J-H- who reported him.

Upon review of the evidence of record, we find that the petitioner has failed to establish he was the victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). According to the police report, the criminal activity being investigated or prosecuted is fraud (larceny) by conversion. However, the crime of fraud (larceny) by conversion does not constitute qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). 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 case fails to demonstrate that fraud (larceny) by conversion is substantially similar to any of the statutorily enumerated crimes.

² Name withheld to protect individual’s identity.

The record does not support counsel's claim that the crime of fraud (larceny) by conversion is substantially similar to blackmail and extortion. Under federal law, the crime of blackmail involves the demand or receipt of cash or anything else of value upon threatening to inform, or as a consideration for not informing, against any violation of any law of the United States. *See* 18 U.S.C. § 873. The threat to inform is the central element in the crime of blackmail, and the crime of fraud (larceny) by conversion does not contain that requirement. *See* Mich. Comp. Laws § 750.362 (1979). The crime of extortion involves obtaining property from another individual by the wrongful use of actual or threatened force. *See Black's Law Dictionary* 585 (6th ed., West 1990); *see also* 18 U.S.C. §§ 871-880. The central element of extortion is the wrongful use of actual or threatened force, and the crime of fraud (larceny) by conversion does not contain that element.

Accordingly, we find that although the certifying official marked "blackmail" and "extortion" on the law enforcement certification as the crimes of which the petitioner was a victim, the record does not establish that the petitioner was the victim of a crime involving, or substantially similar to, blackmail and extortion. The relevant evidence indicates that the only crime of which the petitioner was a victim was fraud (larceny) by conversion and, as set forth above, the central elements of fraud (larceny) by conversion are not substantially similar to those of the qualifying crimes of blackmail and extortion, or any of the other qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Nor do we find convincing counsel's assertion that the petitioner was also subjected to felonious assault, as neither the certifying official nor the petitioner made that assertion.³ Nor does the police report indicate that the petitioner was subjected to a felonious assault. For all of these reasons, the petitioner has not established that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act and as defined at section 101(a)(15)(U)(iii) of the Act and the regulation at 8 C.F.R. §§ 214.14(a)(9), (14), and he has not overcome this ground of the director's denial.

Substantial Physical or Mental Abuse

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also failed to establish 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. Accordingly, the petitioner has not satisfied this criterion, and has not overcome this ground of the director's denial.

Possession of Information Concerning Qualifying Criminal Activity

The record shows that the petitioner possessed information and was helpful to the certifying agency in its investigation. The relevant evidence does not demonstrate, however, that the criminal activity that was investigated encompassed a qualifying crime or criminal activity. Accordingly, the petitioner has not established that he possessed information concerning a qualifying crime or activity, as required by

³ In her response to the director's request for additional evidence and again on appeal, counsel states that because J-H- showed his gun to the petitioner's sister, he committed a felonious assault. Even assuming, *arguendo*, that J-H- committed a felonious assault by showing his gun, it was committed against the petitioner's sister and not the petitioner.

section 101(a)(15)(U)(i)(II) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II), and he has not overcome this ground of the director's denial.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The record shows that the petitioner has been and would be helpful to the certifying agency investigating the offense perpetrated by J-H-. The relevant evidence does not, however, indicate that any qualifying crime or criminal activity was committed in the course of that offense or that the offense is substantially similar to any qualifying crime.. Accordingly, the petitioner has also failed to establish his helpfulness to authorities investigating or prosecuting a qualifying crime or criminal activity, as required by 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III), and he has not overcome this ground of the director's denial.

Qualifying Criminal Activity in Violation of U.S. Laws

As the record fails to establish that a qualifying crime or criminal activity was perpetrated against the petitioner, he has also failed to establish that such 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

As set forth above, the petitioner has failed to establish that he was the victim of qualifying criminal activity or that he meets any of the eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.