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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

PUBLIC COPY

D14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 19 2010

IN RE: [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)

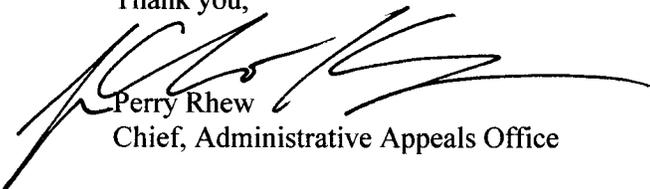
ON BEHALF OF PETITIONER:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed 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 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: (1) that he was the victim of qualifying criminal activity; and (2) that he suffered substantial physical and mental abuse as a result of having been the victim of qualifying criminal activity. On appeal, counsel submits a brief and additional evidence, and requests oral argument before the AAO.

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[.]

The eligibility requirements for U nonimmigrant classification are explained further at 8 C.F.R. § 214.14, which states, in pertinent part, the following:

- (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :
 - (1) 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. . . .

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 definitions:

- (8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

- (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.

Facts and Procedural History

The petitioner is a citizen of South Korea who entered the United States as a B-2 visitor on July 25, 1991. He filed the instant Form I-918 on March 16, 2009. The director issued two requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to the requests for additional evidence, the director denied the petition, as well as the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, on October 16, 2009. Counsel filed a timely appeal from the denial of the Form I-918 on November 18, 2009.

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 petitioner has not demonstrated that he was a victim of a qualifying crime or criminal activity, as the offenses of which he was a victim are not qualifying crimes or criminal activity, as the offenses of which he was a victim are not qualifying crimes or criminal activity, as defined at section 101(a)(15)(U)(iii) of the Act.

The Form I-918, Supplement B (the "law enforcement certification"), which was signed by an Assistant U.S. Attorney (the "certifying official") for the Western District of Washington on September 25, 2008, indicates that the petitioner was the victim of criminal activity involving, or similar to, extortion; obstruction of justice; visa fraud and alien harboring; and unspecified related crimes; as well as the solicitation, attempt, and conspiracy to commit any of those crimes. At part 3, item 3 of the law enforcement certification, the certifying official stated that the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted fell under 8 U.S.C. § 1324(a)(1)(A)(iv) and 18 U.S.C. §§ 2, 371, 1015(c), 1546(a), and 1621. The certifying official stated at part 3, item 5 of the law enforcement certification that the petitioner and his parents were victims "in an immigration and visa fraud case," and that they had been "deceived and extorted."

As indicated on the law enforcement certification, the first criminal activity investigated or prosecuted falls under 8 U.S.C. § 1324(a)(1)(A)(iv) (alien harboring) which states, in pertinent part, that any person who

encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law. . . .

The second criminal activity investigated or prosecuted falls under 18 U.S.C. § 2 (principals) which states, in pertinent part, the following:

- (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The third criminal activity investigated or prosecuted falls under 18 U.S.C. § 371 (conspiracy to commit an offense or defraud the United States) which states, in pertinent part, the following:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

The fourth criminal activity investigated or prosecuted falls under 18 U.S.C. § 1015(c) (fraud related to naturalization, citizenship, or alien registry) which states, in pertinent part, the following:

Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained . . . [s]hall be fined under this title or imprisoned not more than five years, or both. . . .

The fifth criminal activity investigated or prosecuted falls under 18 U.S.C. § 1546(a) (fraud and misuse of visas, permits, and other documents) which states, in pertinent part, the following:

Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the

Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States impersonates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929 (a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

The sixth criminal activity investigated or prosecuted falls under 18 U.S.C. § 1621 (general perjury) which states, in pertinent part, the following:

Whoever—

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code,

willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

The record contains a copy of a criminal indictment filed in the U.S. District Court of the Western District of Washington on May 9, 2000. This criminal indictment named the petitioner as having been the victim of an alien harboring scheme in violation of 8 U.S.C. § 1324(a)(1)(A)(iv). It also named the petitioner's father as having been the victim of a conspiracy to commit visa fraud in violation of 18 U.S.C. § 371; of visa fraud in violation of 18 U.S.C. §§ 2 and 1546(a); and of alien harboring in violation of 8 U.S.C. § 1324(a)(1)(A)(iv).

In his February 27, 2009 statement, the petitioner recounted that shortly after he arrived in the United States with his parents and sister in 1991, his father paid a large, but reasonable, sum of money to ██████ to process their applications for permanent residency. According to the petitioner, his father believed this fee would cover their entire case. The petitioner stated that although ██████ obtained work authorization for each member of the family, and provided them with other documents that made it appear as though their cases were being processed properly, he had in fact filed "false applications" to obtain these benefits. The petitioner stated that ██████ eventually told the family that the fee they had paid initially was a small portion of their debt to him and demanded thousands of dollars, but refused to reveal the total amount they owed. He explained that when the family refused ██████ demands, he told them he would stop processing their cases, that they would be arrested and deported, and that his associates in South Korea would still collect the debt from the family. The petitioner stated that he and his family were terrified, and that even though they gave ██████ all the money they had, he still demanded more. The petitioner stated that when his parents were unable to give ██████ more money, his threats against the family escalated into threats of physical violence if they did not pay him more. The petitioner recounted that both of his parents were forced to work fourteen hours each day, and that he was forced to work as well. Eventually, they were forced to borrow money in order to meet ██████ demands. According to the petitioner, although it was clear that ██████ and his associates were criminals, his family believed they had no option but to meet his demands. The petitioner stated that the family was terrified when they learned authorities were making a case against his ██████ and his associates, but agreed nonetheless to cooperate in order to ensure that ██████ and his associates were stopped. The petitioner stated that although ██████ and his associates threatened the family when they learned they were planning to testify against them, they did so regardless.

In his June 6, 2009 request for additional evidence, the director questioned whether the petitioner was directly threatened by M-K- and his associates. The director stated that the grand jury indictment

¹ Name withheld to protect individual's identity.

indicated only that the petitioner had been a harbored alien, and that having been a harbored alien is not qualifying criminal activity. The director stated further that the grand jury indictment indicated that the petitioner's parents had been the victims only of having been harbored aliens and of receiving work authorization from fraudulently filed immigration documents.

In his July 15, 2009 statement, the petitioner explained that he used to accompany his parents on visits to [REDACTED] office, and that that he witnessed [REDACTED] becoming furious when they told him they did not possess the money he was demanding. The petitioner stated that he witnessed [REDACTED] shouting at, and degrading, his parents; telling them that they would have to work for him to pay him the money he claimed they owed; telling them that he did not care if the petitioner had to quit school and get a job; making clear that they would be deported to South Korea if they did not pay him; and telling them that even if they were deported to South Korea, they would be "dealt with" by his contacts there. The petitioner stated further that on one occasion, after [REDACTED] had learned the family was cooperating with law enforcement personnel, he heard [REDACTED] yelling at his father over the phone, and telling him that if they persisted in aiding the government in the case against him their lives would be in danger. Later, one of [REDACTED] associates came to the family's home one evening and told the petitioner's father to "back off" or the entire family would "suffer the consequences."

In his October 16, 2009 decision denying the petition, the director stated that the petitioner had not demonstrated that he had himself been the victim of the qualifying crimes of perjury, obstruction of justice, and extortion.

On appeal, counsel claims that the director made his determination that the petitioner had failed to establish that he was the victim of qualifying criminal activity in error. As a preliminary matter, the AAO rejects counsel's assertion on appeal that the certifying official's statements on the law enforcement certification constitute "conclusive evidence that [the petitioner] was the victim of qualifying criminal activity." If adopted, counsel's contention would render the adjudicatory process meaningless, as USCIS would be required to approve every petition for U nonimmigrant status filed with a properly executed law enforcement certification.

A. Criminal activity of which the petitioner was himself a victim

The first matter to be addressed in ascertaining whether the petitioner was the victim of qualifying criminal activity is to determine which crimes involved both the petitioner and his parents, and which involved only his parents.

The law enforcement certification does not establish that the petitioner was the victim of any crime beyond having been the victim of an alien harboring scheme in violation of 8 U.S.C. § 1324(a)(1)(A)(iv). Although the certifying official stated at part 3, item 5 of the law enforcement certification that both the petitioner and his parents were the victims of "an immigration and visa fraud case," and that the "family was deceived and extorted," he cited the criminal indictment in support of his assertion. However, that indictment does not indicate that the petitioner was the

victim of any crime beyond having been the victim of an alien harboring scheme. Nor does the indictment support the certifying official's statement at part 3, item 1 of the law enforcement certification that the petitioner was the victim of criminal activity involving, or similar to, extortion; obstruction of justice; and unspecified related crimes; as well as the solicitation, attempt, and conspiracy to commit any of those crimes.

On appeal, counsel states that the petitioner "need only show that he provided assistance in the investigation or prosecution of qualifying criminal activity, not that the perpetrator was ultimately convicted of or even charged [with] the qualifying criminal activity." We do not dispute that assertion. However, in this case, the certifying official specifically cited to the May 9, 2000 criminal indictment, which indicates that it was the petitioner's parents, and not the petitioner, to whom the qualifying criminal activity was primarily directed. The regulation at 8 C.F.R. § 214.14(a)(14) defines a victim of qualifying criminal activity as an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The petitioner has not made that demonstration with regard to any of the crimes referenced in the law enforcement certification other than alien harboring, which is not a qualifying crime.

B. Whether the crime of which the petitioner was himself a victim constitutes qualifying criminal activity

Having determined that the only crime to which the petitioner was a victim was an alien harboring scheme in violation of 8 U.S.C. § 1324(a)(1)(A)(iv), we turn next to the question of whether alien harboring constitutes qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act. Alien harboring is not one of the crimes 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 case fails to demonstrate that alien harboring is substantially similar to any of the statutorily enumerated crimes.

In his November 17, 2009 brief, counsel claims that the crime of alien harboring is substantially similar to the qualifying crimes of obstruction of justice and trafficking, specifically the offense described at 8 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), which criminalizes the destruction, concealment, removal, confiscation, or possession of documents in order to force another person to work.

Counsel's analysis is mistaken, as alien harboring is not substantially similar to the qualifying crimes of trafficking and obstruction of justice. As a preliminary matter, we note that the certifying official did not state that any crimes of which the petitioner was a victim involved, or were substantially similar to, trafficking.² The crime of alien harboring involves encouraging or inducing an alien to come to, enter,

² The certifying official did not mark the "trafficking" box contained at part 3, item 1 of the law enforcement

or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law. *See* 8 U.S.C. § 1324(a)(1)(A)(iv). This crime lacks the central element of trafficking offenses: gaining the labor or services of the trafficking victim.

The crime of alien harboring also lacks the key element within obstruction of justice, which involves the use of intimidation, threats, or other forms of corrupt persuasion to influence, delay, or prevent a witness from testifying in an official proceeding. Accordingly, we find that even though the certifying official marked “obstruction of justice” on the law enforcement certification as one of the crimes to 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, obstruction of justice. The relevant evidence indicates that the only crime of which the petitioner was a victim was alien harboring and, as set forth above, the nature and elements of alien harboring are not substantially similar to those of the qualifying crimes of trafficking and obstruction of justice, or any of the other qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not established that he was the victim of qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Substantial Physical or Mental Abuse as a Result of Qualifying Criminal Activity

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. However, even if the petitioner had demonstrated that he was the victim of qualifying criminal activity, the record still would not demonstrate that he had suffered substantial physical or mental abuse as a result.

In his February 27, 2009 statement, the petitioner recounted the fear his family felt toward M-K-, and described how living with that fear affected them. According to the petitioner, he still has trouble eating and sleeping, and is always looking over his shoulder in the fear that something bad will happen.

In his July 15, 2009 statement, the petitioner reiterated his earlier statements and added that although he is proud of his family for standing up to [REDACTED] and testifying against him, the ordeal has taken a toll on him. According to the petitioner, the impact of the crimes committed against him has not diminished over time. The petitioner stated that even though he has been accepted into the Master of Business Administration (MBA) program at the University of California at Los Angeles (UCLA), his future is still threatened because [REDACTED] put his immigration status in jeopardy.

The petitioner also submitted three letters from [REDACTED], a licensed clinical social worker. In her October 27, 2008 letter, which was prepared on the basis of an October 13, 2008 interview with the petitioner, [REDACTED] described the cultural difficulties faced by the petitioner after immigrating to the United States with his parents, and described how the petitioner still carries some anger and resentment

certification as one of the types of criminal activity of which the petitioner was a victim.

toward his parents for having made such a dramatic change to his life. With regard to the harm he has suffered as a result of the criminal activity, [REDACTED] stated that both the petitioner and his parents were psychologically and emotionally crushed as a result of the actions of [REDACTED] because they felt they had nowhere to turn. [REDACTED] stated that although the petitioner does not meet the diagnostic criteria for a major depressive disorder or a dysthymic disorder, he does suffer from a chronically depressed mood, low self-esteem, and recurrent feelings of hopelessness.

In her July 9, 2009 letter, [REDACTED] stated that she had seen the petitioner "occasionally" since their initial meeting on October 13, 2008. In this letter [REDACTED] stated that although the petitioner has tried to forget about his experiences, he has been unable to do so. According to [REDACTED] the petitioner was substantially harmed psychologically and emotionally as a result of the criminal activity of which he was a victim, and that his ongoing symptoms of anxiety and depression would abate if the stressor of his immigration status were removed so that he could live, study, and work in the United States legally.

In her November 14, 2009 letter submitted on appeal, [REDACTED] stated that the petitioner's psychological state is not based upon his immigration status, but is rather the result of his victimization by [REDACTED] and his associates.

Considered in the aggregate, the relevant evidence of record fails to establish that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

The certifying official stated on the law enforcement certification stated that the criminal activity of which the petitioner was a victim lasted from May 1, 1993 until April 2, 1998. The petitioner does not allege, and the record does not establish, that he was subjected to any physical abuse. The statements of the petitioner and [REDACTED] fail to adequately distinguish between the harm the petitioner suffers as a result of his unresolved immigration status and the harm he suffers as a result of the criminal activity. Although the law enforcement certification states that the criminal activity ended on April 2, 1998, the record does not indicate that the petitioner sought the counseling services of [REDACTED] or any other mental health professional until October 2008, over ten years later. Although [REDACTED] states that she has seen the petitioner for therapy sessions, she indicates neither the total number nor the frequency of such visits. While we do not question the petitioner's anxiety and unease over his immigration status, we agree with the director's determination that such anxiety and unease are related more to his immigration status rather than to the criminal activity to which the family was subjected between 1993 and 1998. Since the cessation of the criminal activity in 1998, the petitioner has earned a bachelor's degree, is enrolled in an MBA program at UCLA, and earned wages of \$64,932 in 2007. Accordingly, even if the petitioner had established that he was the victim of qualifying criminal activity, the relevant evidence fails to establish that the petitioner suffered the requisite, substantial physical or mental abuse

as a result of such victimization under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1).

Oral Argument

On appeal, counsel requests oral argument before the AAO based upon “the complexity of the issues discussed,” and because “these issues cannot be adequately addressed in the instant Appeal/Request.” USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). Counsel identifies no specific, unique factors or issues of law to be resolved, and we find the written record of proceedings to fully represent the facts and issues raised in this case. Consequently, counsel’s request for oral argument is denied.

Conclusion

Although the record indicates that the petitioner has been helpful in the investigation of [REDACTED], the relevant evidence does not demonstrate that the criminal activity of which he was a victim, alien harboring in violation of 8 U.S.C. § 1324(a)(1)(A)(iv), is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. 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. His failure to establish that the offense was a qualifying criminal activity also prevents him from meeting the statutory requirements for U nonimmigrant classification at sections 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) 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.