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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:

OCT 22 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:

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 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 determined that the petitioner did not establish that he was a victim of a qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of a qualifying criminal activity, or that he met any of the other eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner contends through counsel that he suffered substantial mental abuse as a victim of the qualifying criminal offenses of extortion and grand theft.

*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).

The term “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8). Further,

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[.]

8 C.F.R. § 214.14(b)(1).

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), 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 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).

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 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 [REDACTED] who entered the United States on or about December 29, 1994, without being admitted or paroled. The petitioner claims that in 2002, he and wife were victims of immigration fraud committed by [REDACTED] Immigration Services in Santa Ana, California. *See Declaration of [REDACTED] re: U-Visa Statement of Facts*, dated Dec. 21, 2009. The petitioner states that [REDACTED] them that they could obtain lawful permanent residency in the United States through cancellation of removal if they paid him [REDACTED]. *Id.* [REDACTED] was arrested in March, 2003, and charged with, among other things, grand theft in violation of section 487 of the California Penal Code. *See Docket Report; see also newspaper articles regarding La Gudalupana.* According to the law enforcement certification signed by [REDACTED], Orange County Assistant District Attorney, the petitioner was a victim of criminal activity involving extortion, perjury, grand theft, and solicitation to commit the named crimes under sections 518, 127, 487.1, and 664 of the California Penal Code. *See Form I-918 Supplement B*, dated July 15, 2008.

The petitioner claims that [REDACTED] filed an asylum application on his behalf, without his knowledge. *See Declaration of [REDACTED] re: U-Visa Statement of Facts*, dated Dec. 21, 2009; *see also Form I-589, Application for Asylum*, filed May 21, 2002. The asylum application was denied, and a Notice to Appear was served on the petitioner on June 26, 2002. On May 19, 2005, an immigration judge denied the petitioner's application for cancellation of removal, and ordered him removed to Mexico. The petitioner's appeal of the denial of cancellation of removal was dismissed by the Board of Immigration Appeals (BIA) on November 14, 2006. The BIA denied the petitioner's subsequent Motion to Reopen on March 27, 2007.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on December 23, 2008. On October 5, 2009, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit: (1) evidence indicating that he possessed information about a qualifying criminal activity; (2) a certification of helpfulness from a law enforcement official; (3) a signed statement from the petitioner describing the facts of the victimization; and (4) evidence to demonstrate that the petitioner was the victim of substantial physical or mental abuse as a result of a qualifying criminal activity. The petitioner responded 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*

Because the petitioner's law enforcement certification indicates that the petitioner was a victim of criminal activity involving extortion and perjury, offenses which are listed in the statute as qualifying crimes, *see* section 101(a)(15)(U)(iii) of the Act, the director incorrectly found that the petitioner failed to establish that he was a victim of a qualifying criminal activity.

However, the petitioner has failed to meet his burden of showing that he has suffered substantial physical or mental abuse as a result of having been a victim of the qualifying crimes. First, there is no evidence that the petitioner suffered any physical injury or harm. *See* 8 C.F.R. § 214.14(a)(8).

Second, the record does not show that the mental harm to or impairment of the petitioner's emotional or psychological soundness was substantial pursuant to the criteria set forth in the regulations. Here, the petitioner claims that he and his family continue to [REDACTED]. *See Declaration of [REDACTED] on Appeal*, dated Apr. 20, 2010. Specifically, the family's "dreams and hopes of success, of getting ahead in this country, and being able to accomplish all of [their] desires . . . fell overnight." *Id.* As a result, the petitioner and his family members have suffered anxiety and depression, and the petitioner has lost weight. *Id.* Further, the petitioner claims that he and his wife "have spoken of a divorce because of so much tension that this deceit has created." *Declaration of [REDACTED] re U-Visa Mental Abuse*, dated Dec. 21, 2009. A licensed marriage and family therapist who evaluated the petitioner's family for purposes of the U visa petition opined that the family members have suffered excessive trauma and stress as a result of the notary fraud, financial difficulties, and fears of deportation, and that the stressors have resulted in profound marital dysfunction, impaired self esteem, and a loss of trust in others. *See Psychological Report*, dated Dec. 21, 2009. However, the therapist also opined that the petitioner and his wife would work very hard to maintain their marriage and the family. *Id.*

Here, the record supports the petitioner's claim that the family has suffered stress and anxiety as a result of their interaction with [REDACTED] and their financial and immigration concerns. However, the evidence presented does not show that the psychological impact of the criminal activity rises to the level of substantial mental abuse, particularly where there is no evidence that the petitioner has suffered any permanent or serious harm to his appearance, health, or physical or mental soundness. *See* 8 C.F.R. § 214.14(b)(1).

*Conclusion*

Although the petitioner is the victim of a qualifying crime, he has not shown that he has suffered substantial physical or mental abuse as a result of his victimization, as required by section



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101(a)(15)(U)(i)(I) of the Act. The petitioner is consequently ineligible for U nonimmigrant classification.

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.