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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



814

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 16 2011

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:

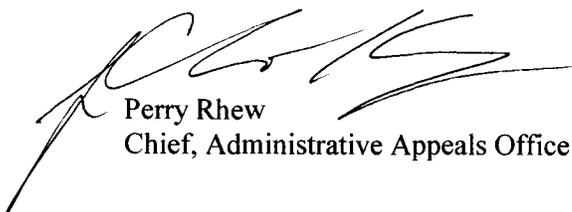


INSTRUCTIONS:

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, 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 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 petition will remain denied.

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 because the law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification) was insufficient evidence of the certifying agency's investigation or prosecution of the criminal activity, and the petitioner failed to establish that he suffered substantial physical or mental abuse as the result of the commission of qualifying criminal activity. On appeal, counsel submitted a statement on the Form I-290B, Notice of Appeal or Motion, and indicated that she would submit a brief or additional evidence to the AAO within 30 days, or by August 19, 2010. As of this date, the record does not contain any supplemental evidence and we, therefore, consider the record complete.

*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;

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(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 regulation at 8 C.F.R. § 214.14(a)(14) provides the following definition pertinent to the U nonimmigrant classification:

*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.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). 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 petitioner is a native and citizen of Mexico who states that he last entered the United States in 1998. The petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the Immigration Court in Los Angeles, California in January 2003. The petitioner later withdrew his application for asylum and withholding and on September 9, 2010, an immigration judge granted him voluntary departure to Mexico.

The petitioner filed the instant Form I-918 U petition on December 15, 2008. On January 11, 2010, the director issued a Request for Evidence (RFE) to obtain additional evidence relevant to the statutory eligibility grounds at section 101(a)(15)(U)(i) of the Act. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed.

On appeal, counsel maintains that the director erroneously concluded that the certifying official must be the same person who investigated or prosecuted the criminal activity. Counsel also states that the director ignored evidence that the petitioner had submitted to show that an investigation or prosecution occurred. Counsel noted that a more detailed brief would follow; however, as mentioned earlier in this decision, we have not received any supplemental evidence since the filing of the appeal. Counsel's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

#### *The Claimed Criminal Activity*

The petitioner claimed in his December 29, 2009 declaration that he was the victim of qualifying

criminal activity because he went to a business called [REDACTED] so that he and his family could gain legal status in the United States. The petitioner stated that he paid approximately \$3,500 to [REDACTED], which filed an asylum application on his behalf, and which resulted in him and his wife being placed in immigration proceedings. The petitioner stated that he soon found out that [REDACTED] was a fraud because he saw a story on the news about them. According to the petitioner, [REDACTED] action in filing the asylum application has caused him extreme emotional distress, and his marriage has suffered greatly. He stated that he contacted law enforcement authorities and that he was willing to continue to cooperate in any way to bring the owners of [REDACTED] to justice.

When initially filing his Form I-918 U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was signed by [REDACTED]. This form listed the criminal acts at Part 3.1 as extortion, perjury, grand theft and solicitation to commit perjury or extortion. [REDACTED] provided the statutory citations for the criminal activity at Part 3.3 as California Penal Code sections 487.1 (grand theft); 518 (extortion); 664 (attempt to commit a crime); and 127 (subornation of perjury). At Parts 3.5 and 3.6, [REDACTED] did not describe either the criminal activity being investigated or prosecuted, or any known or documented injury to the petitioner. Parts 3.5 and 3.6 referred to an "attached U-Visa Certification Form"; however, none was attached.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted an article from the Los Angeles Times about [REDACTED] and a Press Release from the Orange County District Attorney's Office, which described the indictment of the owners of [REDACTED].

USCIS has sole discretion to determine the evidentiary value of a Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4). Although the crimes of extortion and perjury are listed at section 101(a)(15)(U)(iii) of the Act as qualifying crimes and [REDACTED] indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of those two crimes (as well as grand theft), he failed to provide any statements describing the criminal activity and the petitioner's involvement in, victimization and injury from, such criminal activity. Without such information from the certifying agency, the Form I-918 Supplement B is deficient. The record does not establish that qualifying criminal activity was committed against the petitioner, that the qualifying criminal activity was investigated or prosecuted, or that the petitioner suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The newspaper article from the Los Angeles Times and the Press Release from the Orange County District Attorney's Office show that the owners of [REDACTED] were indicted for grand theft and conspiracy, but the documents do not name the petitioner or otherwise establish that he was a client of [REDACTED] and a victim of extortion or perjury due to the company's fraudulent schemes. The petitioner, therefore, has not met the definition of "victim of qualifying crime or criminal activity" at 8 C.F.R. § 214.14(a)(14) and cannot establish his eligibility under section 101(a)(15)(U) of the Act.

*Substantial Physical or Mental Abuse*

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish the other eligibility criteria listed at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act, including the requirement to demonstrate that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Even if the petitioner could establish that he was the victim of a qualifying crime or criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse. 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 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. 8 C.F.R. § 214.14(b)(1).

In his December 29, 2009 declaration, the petitioner noted that he has suffered "extreme emotional distress" since his realization that [REDACTED] filed an asylum application on his behalf without his knowledge. He stated that his marriage has suffered because his wife blames him for what happened, and that he has been diagnosed with Major Depressive Disorder. The petitioner submitted a letter, dated December 30, 2009, from [REDACTED] a Licensed Clinical Psychologist, who stated that after her January 2009 evaluation of the petitioner, she found him to meet the criteria for Major Depressive Disorder, Single Episode, Moderate.

The petitioner indicated generally that his marriage has been strained and that he has experienced extreme emotional distress, but provided no probative details about how his health or daily life has been impacted in the eight years since he initially contacted [REDACTED] for assistance with his and his family's immigration matters. [REDACTED] diagnosed the petitioner with Major Depressive Disorder but did not indicate that she recommended any treatment for the petitioner. Her letter indicated that she met with the petitioner for only one session in January 2009, and she does not relate her diagnosis of the petitioner's Major Depressive Disorder to his experiences with [REDACTED]. We do not discount the depression and personal difficulties that the petitioner has experienced; however, the record does not establish that he has suffered substantial physical or mental abuse under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

*Conclusion*

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.



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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. The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed. The petition remains denied.