

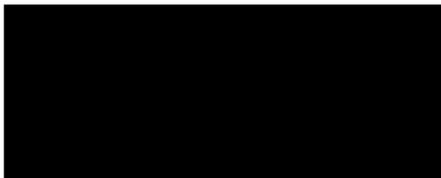
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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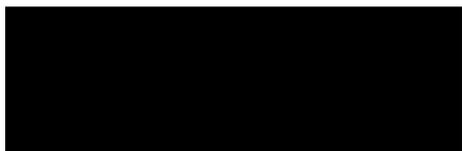
FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:

JAN 10 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 petitioner did not establish that he was the victim of a qualifying crime or criminal activity and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. 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 September 2, 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;

(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 regulations at 8 C.F.R. § 214.14(a) provide definitions pertinent to the U nonimmigrant classification:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) 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

(ii) A Federal, State, or local judge.

* * *

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who states that he last entered the United States in December 2005. The petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the Immigration Court in Miami, Florida in June 2007. The petitioner's next hearing before the Miami Immigration Court is scheduled for June 22, 2011.

The petitioner filed the instant Form I-918 U petition on March 31, 2008. On December 17, 2009, 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 petitioner was a victim of perjury through the unauthorized practice of law by the person who prepared his asylum application, and he was the victim of blackmail because “theft through coercion is called blackmail, and the crime being certified is theft.” Counsel states further that the petitioner has suffered substantial physical and mental abuse as a result of his victimization and that his statement is sufficient to meet his burden of proof. Counsel also submits a Form I-192 waiver application with the petitioner’s original signature.¹ Counsel’s claims fail to overcome the grounds for denial. We affirm the director’s determinations and the appeal will be dismissed.

Law Enforcement Certification (Form I-918 Supplement B)

The petitioner claims that he was the victim of qualifying criminal activity because a man named F-S,² who owned a business called [REDACTED] filed a frivolous asylum application on his behalf when he was seeking to legalize his immigration status and obtain a driver’s license. According to the petitioner, F-S’s action in filing the asylum application caused him to be placed before the Immigration Court in Miami, Florida and that as a result, he has suffered substantial physical and mental abuse.

When initially filing his Form I-918 U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was allegedly prepared by [REDACTED], Bar Counsel, for The Florida Bar in the Unauthorized Practice of Law Division. This form listed the criminal acts at Part 3.1 as perjury, and, solicitation and conspiracy to commit perjury. No statutory citation for the criminal activity was indicated at Part 3.3, only the phrase “unauthorized practice of law.” At Part 3.5, [REDACTED] described the criminal activity as “the unauthorized practice of law, which causes individuals to be placed in removal proceedings.” [REDACTED] did not sign or date the Form I-918 Supplement B. Attached to the form was the petitioner’s complaint to The Florida Bar about F-S-and a letter to the petitioner from [REDACTED] dated January 7, 2008, acknowledging the petitioner’s complaint.

In his RFE, the director asked the petitioner to submit evidence that [REDACTED] met the definition of a certifying official at 8 C.F.R. § 214.14(a)(3) or that she worked for a certifying agency as defined at 8 C.F.R. § 214.14(a)(2). He also requested the submission of a Form I-918 Supplement B with an original signature. In response, the petitioner submitted a facsimile copy of a new Form I-918 Supplement B that was signed by [REDACTED] Deputy Sheriff, Palm Beach County Sheriff’s Office. At Part 3.1 of the form, [REDACTED] listed the criminal acts as “extortion” and

¹ The director noted in the denial letter that the petitioner’s prior Form I-192 waiver application did not contain an original signature, but he did not discuss the petitioner’s inadmissibility or any other issue related to the Form I-192.

² Name withheld to protect identity.

“theft.” The statutory citation listed at Part 3.3 of the form was “812.014,” and Part 3.5 described the criminal activity as: “[The petitioner] on 4-12-2007 paid [F-S-] . . . \$500 to complete and file Immigration Paperwork. [F-S-] provided [the petitioner] with INS Paperwork that was fake.” [REDACTED] did not attach a police report or any other evidence to the Form I-918 Supplement B. He also stated “None” at Part 3.6, which allows the certifying official to provide a description of any known or documented injury to a petitioner.

The petitioner also submitted a new letter from [REDACTED], dated September 3, 2009. According to the letter, the petitioner’s complaint was investigated by the Unauthorized Practice of Law Circuit Committee 15A, which recommended litigation against F-S- and his business. [REDACTED] indicated that the facts of the petitioner’s situation will be used in the petition that will be filed by The Florida Bar, and the petitioner will be needed as a witness.

In this matter, the petitioner has submitted two I-918 Supplement B forms; however, only the form from the Palm Beach County Sheriff’s Office was properly executed. The Form I-918 Supplement B that was allegedly from [REDACTED] was neither signed nor dated. The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires the Form I-918 Supplement B to be “signed by a certifying official within the six months immediately preceding the filing of Form I-918.” More importantly, the petitioner failed to establish that [REDACTED] meets the definition of certifying official at 8 C.F.R. § 214.14(a)(3) or that her employer, The Florida Bar, meets the definition of certifying agency at 8 C.F.R. § 214.14(a)(2). Accordingly, we do not find the Form I-918 Supplement B allegedly prepared by [REDACTED] to be properly executed pursuant to 8 C.F.R. § 214.14(c)(2)(i). We, therefore, will not address counsel’s claim on appeal that the petitioner was a victim of perjury due to the unauthorized practice of law by F-S-.

Criminal Activity

As stated previously, the petitioner’s claim to having being the victim of qualifying criminal activity is based on the actions of F-S- in filing a frivolous asylum application on his behalf, which resulted in his being placed before the Immigration Court in Miami, Florida. Although [REDACTED] listed the crimes of “extortion” and “theft” on the Form I-918 Supplement B at Part 3.1, he provided only the statutory citation for “theft” at section 812.014 of the Florida Statutes (F.S.A.) at Part 3.3; no statutory citation to any offense similar to extortion that was being investigated or prosecuted was provided. Additionally, at Part 3.5 of the form, [REDACTED] describes only a theft offense and does not mention any act that could be considered extortion. Without clarifying information from the certifying agency, we cannot conclude that any law enforcement entity detected, investigated or prosecuted the crime of extortion in this matter, and we will determine only whether theft is a qualifying crime or criminal activity in this instance.

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 theft under F.S.A. § 812.014 is substantially similar to any of the statutorily enumerated crimes. In the State of Florida, theft is defined as:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriately the property to his or her own use or to the use of any person not entitled to the use of the property.

Florida Statutes Ann. § 812.014 (West 2010).

Counsel claims on appeal that “theft through coercion is called blackmail, and the crime being certified is theft,” but counsel submits no new evidence or further legal analysis to support her claim. As noted earlier, the Form I-918 Supplement B from the Palm Beach County Sheriff’s Office does not list “blackmail” at Parts 3.1 or 3.3. We note that under federal law, blackmail occurs when a person “under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing.” 18 U.S.C. § 873 (2010). A theft offense under F.S.A. § 812.014 contains no element of unjustified threatening demands or the threat of informing against the victim, and the petitioner has never testified that he was subjected to blackmail by F-S- or any other individual. We recognize that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. *See* 72 Fed. Reg. 179, 53014-42, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated or prosecuted F-S- for blackmail, and there is no indication that the certifying agency intends to investigate or prosecute F-S- for blackmail in the future.

The offense identified in this case, theft, is not similar to the qualifying crime of blackmail because the nature and elements of these offenses are not substantially similar. Counsel does not claim that theft under F.S.A. § 812.014 is similar to any of the other 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 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 section 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, U.S. Citizenship and Immigration Services (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).

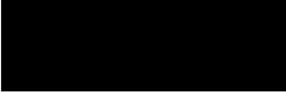
In his December 30, 2009 sworn statement, the petitioner notes that he has suffered "great mental anguish due to my impending trial before the immigration court." The petitioner testifies that he feels frightened, and has feelings of distress, anxiety, depression, grief, and feels as though someone is following him. He adds further that he cannot sleep at night, feels as though he must hide all of the time and feels ill when he thinks about his "impending immigration fate."

On appeal, counsel references the petitioner's December 30, 2009 sworn statement and notes that the petitioner's "feelings should not be subject to argument absent a sicological [sic] report." Counsel states that the petitioner, more than anyone else, knows how he feels and how his present situation impacts on his life.

We do not discount the anxiety that the petitioner feels because he is presently in removal proceedings before the Miami Immigration Court. However, the record does not establish that the petitioner 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 offense of theft under F.S.A. § 812.014 is not a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that any certifying agency investigated or prosecuted any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act in connection with F-S's actions against the petitioner. Accordingly, 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.