

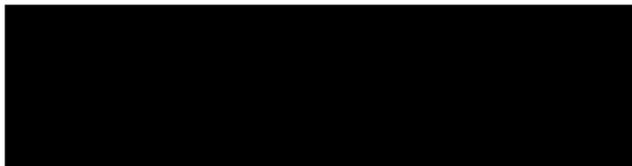
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D14

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAR 28 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:  
[Redacted]

**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 for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submits a brief.

*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 whose application for cancellation of removal pursuant to section 240A(b)(1) of the Act was denied by an immigration judge. The Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on November 2, 2007, and the Ninth Circuit Court of Appeals dismissed a petition for review on April 18, 2008.

The petitioner filed the instant Form I-918 U petition on December 15, 2008. On December 7, 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 Form I-918 U petition, and the petitioner timely appealed.

On appeal, counsel maintains that the petitioner was the victim of qualify criminal activity or activity similar to the crimes enumerated at section 101(a)(15)(U)(iii) of the Act, and that he was helpful in the investigation of the criminal activity. Counsel states that the fraud charges that were brought against La [REDACTED] Immigration Services ([REDACTED]) arose from the perjury, extortion and theft that [REDACTED] enacted on the petitioner. According to counsel, [REDACTED] obtained the petitioner's money through false pretenses by filing an asylum application on the petitioner's behalf without letting the petitioner read the application to know what he was signing. Counsel also states that [REDACTED] used the immigration system to manipulate the petitioner and that the petitioner was threatened with deportation if he did not pay the money demanded of him by [REDACTED]. Counsel states further that [REDACTED] caused the petitioner to perjure himself since he signed his asylum application under penalty of perjury. Counsel maintains that the petitioner suffered substantial physical and mental abuse and requests that the AAO review the record in its entirety and take into consideration the totality of the petitioner's circumstances when rendering a decision on the petition.

#### *The Claimed Criminal Activity*

The petitioner claimed in his June 19, 2008 declaration that he was the victim of qualifying criminal activity because he went to [REDACTED] so that he and his wife could gain legal status in the United

States. The petitioner stated that both he and his wife paid approximately \$5,500 to [REDACTED] which filed asylum applications on his and his wife's behalf, which resulted in them being placed in immigration proceedings. The petitioner stated that he found out that [REDACTED] had deceived them when he went to its office and saw a notice on the door that the business had been closed by the Orange County District Attorney's Office.

*The Form I-918 Supplement B Fails to Demonstrate that the Petitioner was the Victim of a Qualifying Crime or Criminal Activity*

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], Assistant District Attorney, Orange County, California. This form listed the criminal acts of which the petitioner was a victim at Part 3.1 as extortion, perjury, grand theft and solicitation to commit perjury or extortion. Mr. [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, Mr. [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, no additional certification by Mr. [REDACTED] or his office was attached; only the petitioner's June 19, 2008 declaration was attached.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted: a "Docket Report" from the Orange County Superior Court regarding the indictment of one of [REDACTED] owners; one article from The National Notary Association and two articles 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 La Guadalupana.

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 Mr. [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 being investigated or prosecuted by his office 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 certifying agency investigated or prosecuted any qualifying criminal activity committed against the petitioner, or that the petitioner suffered direct and proximate harm as a result of such victimization.

The articles 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. Although counsel states on appeal that the petitioner was threatened with deportation if he did not pay the fees established by [REDACTED]

in neither of the petitioner's declarations does he make such an allegation, and the certifying agency also does not indicate that any threats of deportation against the petitioner were made.<sup>1</sup> 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.

*The Petitioner does Not Meet any of the Eligibility Criteria at Section 101(a)(15)(U)(i) of the Act*

As the petitioner did not establish that [REDACTED] deception of him was a qualifying crime or criminal activity, he has failed to establish the eligibility criteria at subsection 101(a)(15)(U)(i) 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 as a result. 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 June 19, 2008 declaration that he submitted with the Form I-918 U petition, the petitioner did not address how his experiences with [REDACTED] had affected him. In his December 30, 2009 declaration, the petitioner noted that he suffers physically, morally and economically from his interactions with [REDACTED]. He stated that he worried that he could be deported from the United States and does not want to leave his children. The petitioner also stated that he "is no longer the same as before," and reported that he is very depressed. He asserted that one of his children suffers from asthma and he does not believe that he would be able to afford medical treatment in Mexico, and he also worries about the violence happening in that country.

The petitioner submitted a psychological evaluation, dated July 23, 2008, from [REDACTED] a Licensed Clinical Psychologist, who stated that she met with the petitioner on three separate occasions (June 19, June 28 and July 11, 2008). Ms. [REDACTED] stated that the petitioner met the diagnoses for Major Depressive Disorder, Single Episode, Mild, and Anxiety Order, Not Otherwise Specified.

The petitioner indicated generally that he fears for his and his family's futures due to the uncertainty of their ability to remain in the United States, but provided no probative details about the severity of the harm he experienced through his interactions with [REDACTED]. Ms. [REDACTED]

<sup>1</sup> The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

diagnosed the petitioner with both a Major Depressive Disorder and an Anxiety Disorder, but did not indicate that she recommended any treatment for the petitioner, and there is no evidence that the petitioner has followed any treatment protocols for his depression or anxiety. We do not discount the stress that the petitioner has experienced; however, the record does not establish that he has suffered substantial physical or mental abuse as a result of his victimization 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 the deception committed against him constituted 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 subsection 101(a)(15)(U)(i) of the Act.

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.