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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



B14

DATE: **JUL 13 2012** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 

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:

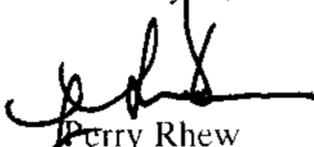


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (“the 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 petition will remain denied.

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.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

- (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 regulation at 8 C.F.R. § 214.14(a) provides definitions of certain terms relevant to the adjudication of a Form I-918 U petition and states, in pertinent part:

(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.

(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.

In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and 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. 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, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims he last entered the United States on or about August 28, 1995 without inspection. The petitioner was placed into removal proceedings and on March 19, 2004 an immigration judge granted him until May 18, 2004 to voluntarily depart the United States. The petitioner subsequently appealed the decision of the immigration judge and the petitioner was again granted voluntary departure on May 10, 2007, and was given until July 9, 2007 to depart the United States. The petitioner again appealed the decision and the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on August 12, 2008 and granted the petitioner 60 days to voluntarily depart the United States. A subsequent motion to reopen the matter was denied on April 27, 2009.

According to an incident narrative prepared by [REDACTED] on March 2, 2010 he was requested by [REDACTED] to take a report from two ladies, one identified as the petitioner's spouse.¹ [REDACTED] translated as the

¹ [REDACTED] does not indicate that he interviewed the petitioner.

petitioner's spouse and the second individual spoke only Spanish. The individuals indicated that H-T-² had befriended them and told them he could get them permanent papers to remain in the United States. H-T- asked the petitioner's spouse and the second individual for their "INS identification cards and money."³ [REDACTED] indicates the individuals reported that they had given their identification cards and \$2,000 to H-T- but later learned that H-T- used INS cards to bring illegal immigrants across the border.

On October 22, 2010, the petitioner filed the instant Form I-918, Petition for Nonimmigrant U Status. The U Nonimmigrant Status Certification (Form I-918 Supplement B) identified [REDACTED] as the certifying official. [REDACTED] noted at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of extortion and at Part 3.2 that the criminal activity occurred from October 2009 until July 2010. At Part 3.3 of the Form I-918 Supplement B, [REDACTED] listed the statutory citation of the criminal activity being investigated or prosecuted as New Mexico Statutes (NMSA) § 30-16-9 - Extortion. [REDACTED] did not provide further details of the investigation or prosecution leaving both Part 3.5 and Part 3.6 of the Form I-918 blank, except to note that the petitioner cooperated in the investigation and prosecution of the case. Although counsel for the petitioner referenced the inclusion of police reports and court documents, the record in support of the Form I-918 included only the March 2, 2010 incident narrative prepared by [REDACTED] and a list of victims which included the petitioner's name.

In response to the director's request for evidence (RFE) the petitioner provided an affidavit signed by [REDACTED] dated May 11, 2011. [REDACTED] noted that the petitioner and his spouse came to him while he was still sheriff to report a crime. [REDACTED] stated: "A man had taken money from them having promised to give them papers and now he was making threats and extorting them." [REDACTED] indicated that he had one of his deputies take a report as the petitioner and his spouse "possessed information about this crime since they had details about the money that was taken from them and the threats being made to them to keep quiet or else their lives would be in danger."

In the petitioner's personal statement, he indicated that he and his spouse took a risk in informing on the activities of H-T- and that the authorities informed him that by doing so his and his family's lives were in great danger. He noted that also according to the authorities H-T- had plans to kill him and his family and he was assured that if he cooperated, he and his family would be protected from H-T- and his people. The petitioner indicated that because of his cooperation, H-T- has a grudge against him and his family and he fears returning to Mexico because H-T- will kill him and his family. The petitioner stated that he has lost his appetite worrying about his and his family's safety and that he is anxious and depressed but does not have the funds for treatment.

Upon review of the record, including the petitioner's response to the RFE, the director found the evidence submitted insufficient to establish the petitioner's eligibility. Accordingly, the director

² Name withheld to protect the parties' identity.

³ It appears that H-T- requested the second individual's "INS identification card," as she had been approved for lawful permanent residence.

denied the petition. The petitioner timely appealed the denial of the Form I-918 petition. On appeal, counsel asserts that the petitioner was not just a victim of a financial crime even though the police report (dated March 2, 2010) did not specify that extortion was being investigated. Counsel contends that the petitioner and his spouse were threatened by H-T- in connection with the money he had taken from them through fraud and the threats rendered the criminal activity extortion. Counsel claims the petitioner has demonstrated the emotional harm he suffered from the threats by H-T- and thus is eligible for U nonimmigrant relief.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the record is sufficient to demonstrate that the petitioner was the victim of the qualifying crime of extortion. On the Form I-918 Supplement B, the certifying official identified the crime(s) being investigated or prosecuted as a violation of NMSA § 30-16-9, which provides:

Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

- A. a threat to do an unlawful injury to the person or property of the person threatened or of another;
- B. a threat to accuse the person threatened, or another, of any crime;
- C. a threat to expose, or impute to the person threatened, or another, any deformity or disgrace;
- D. a threat to expose any secret affecting the person threatened, or another; or
- E. a threat to kidnap the person threatened or another.

N.M. Stat. Ann. § 30-16-9 (West)

The Form I-918 Supplement B, and the certifying official's affidavit provide sufficient information to conclude that the Valencia County Sheriff's Office detected and investigated a violation of NMSA § 30-16-9. 8 C.F.R. § 214.14(a)(5). The director's decision to the contrary will be withdrawn.

Although the petitioner was the victim of qualifying criminal activity, the record fails to demonstrate that he suffered substantial physical or mental abuse as a result of his victimization, as required by section 101(a)(15)(U)(i)(I) of the Act. The petitioner reveals his fear of being returned to Mexico because he believes the perpetrator lives there.

According to the petitioner, he fears being sent to Mexico because he believes H-T- has people following his family so that if they are sent to Mexico, H-T- will kill him and his family there. The petitioner does not believe he can find peace being in the same country as H-T-.

The petitioner also submits seven letters from family and friends, who declare that the petitioner and his family have suffered great psychological pain fearing they will be deported to Mexico. The declarants note that the petitioner has lost weight and that his spouse is nervous and anxious and that one of their children is under a psychiatrist's care for depression. The record includes a May 9, 2011 letter signed by [REDACTED] behavioral health therapist with [REDACTED] notes that she is working with the petitioner's daughter for treatment of suicidal ideation. [REDACTED] indicates the petitioner's daughter is upset about the possibility of her parents' deportation and she is fearful of the man who tricked her parents regarding the possibility of their citizenship.

The record also includes a psychological evaluation prepared by [REDACTED] on October 12, 2010. [REDACTED] does not indicate the length of time she spent evaluating the petitioner or whether the evaluation was based on one or more interviews with the petitioner or other members of the family. [REDACTED] indicates she gathered information on the presenting problem which included the petitioner's fear of H-T- and the anxiety caused by his and his wife's arrest as fugitives by the immigration department when he thought immigration authorities were protecting him and his family because they were assisting in the capture of H-T-. [REDACTED] reports that the petitioner's involvement with H-T- and immigration authorities has shaken the petitioner's confidence and he regrets the armed detainment by immigration which occurred in front of his daughters. [REDACTED] states that the biggest emotional stressor for this family is the "continuing extortion in the form of harassing and threatening calls which the family received and continues to receive from [H-T-] and other persons associated with him." [REDACTED] also states that the petitioner reported that the Mexican consulate has made a protection plan for the petitioner and his family for their deportation, and that the petitioner was told by U.S. immigration authorities that H-T- had plans to kill him. She notes other current stressors affecting the family include financial hardship and the subsequent deteriorating medical and mental health of each member of the family. She concludes that the petitioner and his family "are suffering emotional and psychological trauma as a result of this extraordinarily stressful event." Although [REDACTED] sets out the clinical definitions of post-traumatic stress disorder (PTSD) and general anxiety disorder, she does not diagnose the petitioner as having these disorders. She also notes that the fraudulent immigration situation, financial hardship and failing medical health are Axis IV factors. [REDACTED] recommends that the petitioner's family be afforded a safe environment in order to prevent further serious emotional and physical damaging effects.

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of qualifying criminal activity. The petitioner states that he fears deportation and he articulates his belief that H-T- will kill him and his family if they are deported to Mexico; however, the petitioner's statement does not provide the probative details of any substantial physical or mental abuse he suffered as a result of him being a victim of a qualifying

crime. In addition, the petitioner's declaration indicates that he fears H-T- because he reported the activities of H-T- to the authorities, not as a result of being extorted by H-T-.

In addition, the psychological evaluation prepared by [REDACTED] is not consistent with the petitioner's declaration. While [REDACTED] stated in her evaluation that the petitioner was continually being harassed and threatened, the petitioner does not make such a claim in his declaration. In addition, the petitioner's declaration does not mention any discussions he had with the Mexican consulate or U.S. immigration authorities about threats from H-T- against the petitioner and his family. Furthermore, [REDACTED] attributes the petitioner and his family's general mental health condition to a number of factors including the petitioner's arrest and detention by immigration authorities, as well as financial and medical hardship, but does not provide a specific diagnosis of any mental health condition from which the petitioner suffers. The Form I-918 Supplement B and the accompanying police report also do not demonstrate that the petitioner suffered resultant substantial physical or mental abuse. The certifying official does not include any information at Part 3.6 of the Form I-918 Supplement B regarding any known or documented injury to the petitioner. The reporting officer also fails to provide any information regarding any known injuries to the petitioner. Overall, the relevant evidence does not demonstrate that the petitioner suffered substantial mental abuse as a result of having been a victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) and the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 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, although the petitioner has established that he was the victim of a qualifying crime, he has not established that he suffered resultant substantial physical or mental abuse.

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