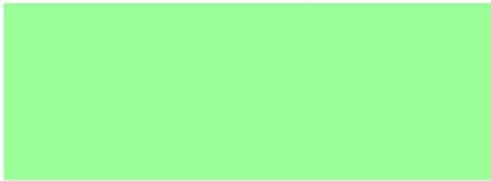


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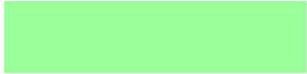


U.S. Citizenship
and Immigration
Services



DATE: Office: VERMONT SERVICE CENTER

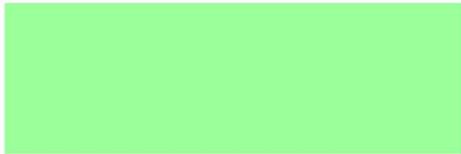
APR 19 2013

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 determined that the petitioner did not establish that he was the victim of a qualifying crime. The petition was denied accordingly. On appeal, counsel submits a brief.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) of the Act if:

- (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[.]

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; stalking; 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; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned

crimes[.]¹

“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 regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *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.

* * *

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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).

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claimed on the Form I-918 U Petition to have last entered the United States as a nonimmigrant visitor in January 2005. The petitioner submitted an asylum application on December 4, 2006, and he was placed into removal proceedings when his asylum application was referred to the Los Angeles, California Immigration Court. Removal proceedings against the petitioner were terminated on December 2, 2010. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U Petition) on April 4, 2011. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity. On October 18, 2011, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition accordingly and the petitioner through counsel timely appealed.

On appeal, counsel states that the crime of grand theft is substantially similar to the qualifying crime of extortion and that the crime of conspiracy to defraud is similar to the qualifying crime of obstruction of justice.

Claimed Criminal Activity

In his personal statement, the petitioner recalled that from 2006 until 2007, he and his wife sought the services of *notarios*, M-H and L-H,² to legalize their status in the United States. M-H and L-H filed paperwork on behalf of the petitioner and his wife, and the petitioner paid \$15,000 in total over several months. Some payments were made to M-H after she threatened the petitioner and his wife. On the day of his asylum interview, the petitioner learned that M-H and L-H had filed an application for asylum and not an application for residency. The petitioner and his wife were placed in removal proceedings after their asylum interviews. Thereafter, the petitioner and his wife were unable to find M-H and L-H and eventually reported M-H and L-H to a law enforcement agent. As a result of the activities of M-H and L-H, the petitioner stated that he suffered from depression, anxiety and a financial loss exceeding \$15,000.

In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by Michael Groch of the Office of Economic Crimes, San Diego, California District Attorney's Office (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim of at Part 3.1 as extortion, obstruction of justice, attempt to commit any of the named crimes and grand theft. At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as California Penal Code (CPC) sections 182(A)(4) (conspiracy to defraud) and 487(A) (grand theft). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated "see declaration attached." Regarding any known injuries to the petitioner, the certifying official left Part 3.6 blank. At Part 4.5, which provides for other information related to the helpfulness of the victim, the

² Name withheld to protect the individuals' identities.

certifying official stated that the petitioner and his wife were fraudulently induced to file immigration papers prepared by M-H and L-H, M-H and that L-H stole approximately \$15,000 from the petitioner. According to the certifying official, when the petitioner experienced difficulty making payments, M-H and L-H threatened the petitioner with deportation to Mexico. The record does not contain a supporting letter or statement from the certifying official to accompany the Form I-918 Supplement B.

Analysis

The Petitioner is Not a Victim of Qualifying Criminal Activity

On appeal, counsel for the petitioner maintains the petitioner was a victim of grand theft in violation of CPC § 487(a) and that grand theft is similar to the qualifying crime of extortion as defined in CPC § 518. Counsel also states that the petitioner is a victim conspiracy to defraud in violation of CPC§ 182(a) and that conspiracy to defraud is similar to obstruction of justice.

Under California law, grand theft occurs upon violation of the following:

- (a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)[.]

Cal. Penal Code § 487(a) (West 2013).

Under California law, conspiracy to defraud another of property occurs upon violation of the following:

- (a) If two or more persons conspire:

* * *

- (4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

Cal. Penal Code § 182(a)(4) (West 2013).

The particular crimes that were certified are not specifically listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act. 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 inquiry, therefore is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under California law, extortion is defined as:

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

Cal. Penal Code § 518 (West 2013).

Under California law, "Fear used to extort; threats inducing" is described as follows, in pertinent part:

Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened or of a third person; or,

* * *

4. To expose any secret affecting him or them.

Cal. Penal Code § 519 (West 2013).

Counsel has not established that the crime of grand theft is similar to extortion. The nature and statutory elements of grand theft under CPC § 487(a) are not substantially similar to extortion under CPC § 518. Under CPC § 487(a), grand theft does not require the use of force or fear to take the property of another valued above \$950. In contrast, the nature of extortion at CPC § 518 involves using force, fear or the color of official rights to obtain the property of another individual.

On appeal, counsel further asserts that it is reasonable to conclude that M-H and L-H committed the qualifying crime of obstruction of justice in an effort to avoid justice and continue their abuse and exploitation of the petitioner. Counsel also states that the crime of conspiracy to defraud is similar to obstruction of justice.

The record does not establish that the petitioner was the victim of obstruction of justice. The certifying official indicated that the petitioner was the victim of obstruction of justice at Part 3.1 of Form I-918 Supplement B; however, he did not list any section of California Penal Law relating to obstruction of justice at Part 3.3, which requires the certifying official to provide the statutory citations of the crime(s) investigated or prosecuted. At Part 3.5, the certifying official leaves the section blank but includes his narrative comments at Part 4.5 which fail to mention the crime of obstruction of justice. According to 8 C.F.R. § 214.14(a)(5), the term "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 certifying official does not state on the Form I-918 Supplement B whether his office, the California State Police, or any other law enforcement entity discovered or otherwise investigated the allegations of obstruction of justice made by the perpetrator.

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Counsel states that the crime of conspiracy to defraud is similar to obstruction of justice. Counsel did not compare the nature and elements of conspiracy to defraud and obstruction of justice as required by regulation. 8 C.F.R. § 214.14(a)(9). Consequently, the petitioner has not shown that the crime of conspiracy to defraud is similar to the qualifying crime of obstruction of justice.

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

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.

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