



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JUN 10 2013

Office:

VERMONT SERVICE CENTER

FILE:

IN RE:

PETITIONER:

APPLICATION:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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.

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: (1) he has been the victim of qualifying criminal activity; (2) he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; (3) he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity; and (4) he has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. On appeal, counsel submits a brief and copies of documents already included in the record.

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; 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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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 of more of these offenses, if:

(A)The petitioner has been directly or 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 eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on 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

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.

one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by U.S. Citizenship and Immigration Services (USCIS). USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. 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."

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 Mexico who claims to have entered the United States in March 1989 without inspection. In 1993, the petitioner was placed into removal proceedings. An immigration judge granted him voluntary departure, which was upheld by the Board of Immigration Appeals (Board) and the Ninth Circuit Court of Appeals. However, he failed to depart the United States as ordered. The petitioner filed the instant I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 7, 2008. On May 14, 2010, the

director issued a Request for Evidence (RFE) requesting that the petitioner submit additional evidence that he was the victim of a qualifying crime, a copy of his passport, and information regarding his arrest record. In addition, the director requested the petitioner to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive his ground of inadmissibility. Counsel responded to the RFE with a Form I-192 and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

In his appeal brief, counsel claims that the petitioner is the victim of qualifying criminal activity, witness tampering, and he has suffered substantial mental abuse through telephonic death threats.

Claimed Criminal Activity

In his declaration, the petitioner claims that when he resided in Mexico he was employed with the Mexican Federal police, and after his family was threatened by drug traffickers, he fled to the United States. In July 1997, he began working with the anti-drug force in Utah as a confidential informant. He claims that he began to receive death threats and the police offered him witness protection. However, even with police protection, he has to move frequently because he continues to receive death threats. On June 26, 2006, the petitioner states his father was murdered in Mexico and he claims that his father's murder was related to his work as a confidential informant. He states he has not received a death threat since November 2007.

The Form I-918 Supplement B that the petitioner submitted is signed by [REDACTED] Department (certifying official), on May 7, 2008. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as witness tampering and other: threats. In Part 3.3, the certifying official refers to Utah Code Annotated (UCA) § 58-37-8, distribution of a controlled substance, methamphetamine, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicates that the petitioner was an informant and witness to numerous controlled substance purchases, and he has received threats in person or by phone. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official states there were no known actual injuries to date.

The Petitioner was Not a Victim of Witness Tampering

Under Utah Code Annotated § 76-8-508, witness tampering is defined as:

- (1) A person is guilty of third degree felony of tampering with a witness if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation, he attempts to induce or otherwise cause another person to:
 - (a) testify or inform falsely;

- (b) withhold any testimony, information, document, or item;
- (c) elude legal process summoning him to provide evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned.

Utah Code Annotated § 76-8-508 (West 2013).

Counsel claims that the petitioner was the victim of witness tampering by anonymous parties; however, the record does not establish that witness tampering was investigated or prosecuted by the certifying agency. While the letters from the certifying official indicate that the petitioner reported to him that he was fearful of being retaliated against due to his cooperation with the certifying agency, and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of witness tampering and threats, the only crime certified at Part 3.3 of the Form I-918 Supplement B is distribution of a controlled substance. The certifying official presented no evidence that he or any other law enforcement entity investigated a crime of witness tampering against the petitioner. The petitioner is, therefore, not the victim of the qualifying crime of witness tampering or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) 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 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 of his victimization. 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).

At Part 3.6 of the Form I-918 Supplement B, the certifying official wrote "no known actual injuries documented to date." In his declarations, the petitioner states that he lives in fear, he has to constantly change his address and phone number, and he drives his children to school daily even though the school is only one block away. He claims that he cannot sleep and he is worried about his family. In addition, he states he would receive no protection from the drug traffickers in Mexico because the Mexican police are corrupt. In his psychological evaluation dated June 13, 2011, Dr. [REDACTED] reports that according to the petitioner, his fear focuses on his involvement with the Mexico police as a police officer and the [REDACTED] police department as an informant. Dr. [REDACTED] diagnoses the petitioner with

anxiety and recommends that he be assessed for post-traumatic stress disorder and that he receive individual therapy.

While we do not minimize what the petitioner experienced as a result of his involvement as a confidential informant to the [REDACTED] police department, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The petitioner's helpfulness to the [REDACTED] police department was confined to its investigation of trafficking in methamphetamine, not to witness tampering. As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

Conclusion

Although the petitioner was helpful to the [REDACTED] Department in the investigation of drug trafficking activities, he has not demonstrated that: (1) he was a victim of qualifying criminal activity; (2) he suffered substantial physical or mental abuse as a result of having been such a victim, as required by subsection 101(a)(15)(U)(i)(I) of the Act; (3) he possesses information concerning the qualifying crime or criminal activity upon which his petition is based; and (4) he has been, is being, or is likely to be helpful to a federal, state, or local law enforcement authorities, prosecutor, judge or other federal state, or local authorities investigating or prosecuting the qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.