



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **NOV 21 2013** Office: VERMONT SERVICE CENTER

IN RE:

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).

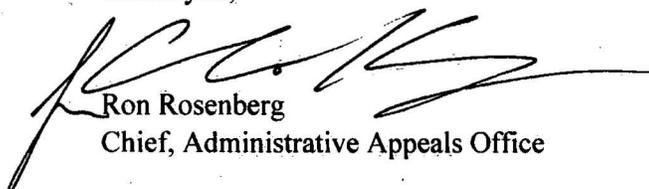
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant 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)(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. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity or that he has suffered substantial physical or mental abuse as a result of his victimization. On appeal, counsel submits a brief and a letter from the Oregon Department of Justice.

Applicable Law

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

- (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: . . . extortion; . . . witness tampering; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

“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)(14) defines a victim, in pertinent part, as:

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 term “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8). 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. 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 petitioner is a native and citizen of Mexico who entered the United States in February, 1994, without inspection, admission or parole. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on May 13, 2011. On March 8, 2012, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity or that he had suffered substantial physical or mental abuse as a result of his victimization. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of theft by extortion, which is the qualifying crime of extortion, and is substantially similar to witness tampering. Counsel also claims that the director erred in finding that the petitioner has not suffered substantial physical or mental abuse because he did not adequately address all the evidence submitted.

Claimed Criminal Activity

In his May 2, 2011 statement, the petitioner recounted that in 2010 he paid a man he thought was an attorney to obtain lawful permanent residency for the petitioner. The attorney and his interpreter

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repeatedly asked the petitioner to pay them money, which the petitioner did, and misled him about his immigration case. After the petitioner received deportation paperwork, the interpreter warned the petitioner not to report him or the attorney to law enforcement, or the attorney would have the petitioner deported and further harm the petitioner and his family.

Analysis

On appeal, the petitioner has established that he was the victim of a qualifying crime, but has not shown that he suffered substantial physical or mental abuse as a result.

Qualifying Criminal Activity

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 [REDACTED] of the [REDACTED] (certifying official). The certifying official listed the criminal acts that the petitioner was the victim of, at Part 3.1, as extortion, witness tampering, and other: "theft." At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as Oregon Revised Statutes (ORS) section 164.055 (theft in the first degree), ORS section 164.057 (aggravated theft in the first degree), and ORS section 164.075 (theft by extortion). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the perpetrator extorted over \$40,000 in fees from the petitioner and other victims by falsely representing himself as an immigration attorney, and then threatened to have the petitioner deported if he reported the crime to law enforcement.

In his denial decision, the director did not fully explain why ORS § 164.07 (theft by extortion) was not a qualifying crime. Here, the certifying official stated that the petitioner was the victim of extortion, and listed ORS §164.075 as one of the crimes investigated or prosecuted. Under Oregon's criminal law, ORS §164.075 is the only statute penalizing extortion. Accordingly, the petitioner has demonstrated that he was the victim of extortion, a qualifying crime listed at subsection 101(a)(15)(U)(iii) of the Act. The director's determination to the contrary will be withdrawn.

Because the petitioner has established that he was the victim of the qualifying criminal activity of extortion, we do not reach the issue of whether he was also the victim of the qualifying crime of witness tampering. However, the record shows that the certifying official did not state that witness tampering or any similar activity was investigated or prosecuted. See 8 C.F.R. § 214.14(c)(2)(i) (requiring the certifying official to state that the petitioner has been the "victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting.").

Substantial Physical or Mental Abuse

The petitioner has not, however, demonstrated that he suffered substantial physical or mental abuse resulting from the extortion. In his May 2, 2011 statement, the petitioner recounted his interactions with the individual posing as an attorney and his interpreter and noted that the interpreter threatened him with deportation and harm to his family. On the Form I-918 Supplement B, the certifying

official listed the known injuries to the petitioner as “no known physical injuries.” In her letter dated April 3, 2012, [REDACTED] of Justice, stated that the petitioner was the victim of unauthorized practice of immigration law and that he was threatened with deportation and harm to his family.

The petitioner submitted a psychological evaluation from [REDACTED] a licensed professional counselor, dated October 21, 2012. [REDACTED] stated that as a result of *notario* fraud, the petitioner has been suffering from sleep disturbances and is anxious. He noted that the petitioner has experienced panic attacks, and that he has gastritis and high blood pressure. [REDACTED] reported that the petitioner appears hyper-vigilant and paranoid, and that he worries about his children’s physical and mental health. He diagnosed the petitioner with Dysthymic Disorder (depression) and Generalized Anxiety disorder. He also opined that the petitioner is at risk for developing Panic Disorder without Agorophobia. [REDACTED] noted that the petitioner is afraid of the attorney and what he will do to the petitioner and his family.

On appeal, counsel submits a second letter from [REDACTED] from the Oregon Department of Justice. [REDACTED] repeats the information that was provided in her first letter, and also notes that as a result of the unauthorized practice of law, the petitioner has suffered financial losses and significant emotional distress. She also states that in general, victims of *notario* fraud face the loss of large sums of money and possible deportation.

While the record shows that the petitioner has been depressed and anxious, the preponderance of the evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the extortion. The petitioner himself and the certifying official do not describe any physical or mental injuries to the petitioner resulting from the extortion. [REDACTED] first letter does not mention any injuries to the petitioner, and although in her letter on appeal she states generally that the petitioner has suffered significant emotional distress as a result of the *notario* fraud, she does not provide any details or describe any abuse. Counsel asserts that the petitioner’s gastritis and high blood pressure are the result of his victimization, but counsel submits no medical records or other evidence to support that contention, and [REDACTED] did not attribute the petitioner’s gastritis or high blood pressure to the extortion.

We do not minimize the impact of the events upon the petitioner; however, the preponderance of the evidence does not demonstrate that the extortion caused the petitioner to suffer substantial physical or mental abuse. On appeal, [REDACTED] and counsel both refer to the financial loss the petitioner has suffered, and counsel cites section 101(b)(1) of the Act and 8 C.F.R. § 204.2(e)(1)(v) as evidence that USCIS recognizes both mental harm and financial loss as abuse. See [REDACTED] letter dated April 19, 2013; Brief on Appeal at 12-13. Section 101(b)(1) of the Act and 8 C.F.R. § 204.2(e)(1)(v) pertain to the definition of a “child” and the residence required to establish eligibility of a child of an abusive U.S. citizen or lawful permanent resident parent to self-petition for immigrant classification under section 204(a)(1)(A)(iv) and (a)(1)(B)(iii) of the Act. Those provisions do not apply to these proceedings. As stated in the U nonimmigrant regulation, “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8).

The relevant evidence does not demonstrate that the financial harm the petitioner suffered from the extortion caused permanent or serious harm to his physical or mental soundness, or otherwise resulted in substantial physical or mental abuse pursuant to the regulation at 8 C.F.R. § 214.14(b)(1).

In her brief, counsel asserts that the director overlooked evidence such as portions of the mental health evaluation, the Oregon Department of Justice letter, and the petitioner's previous attorney's brief¹ in his decision dated November 29, 2012. Although the director did not fully discuss each claim and piece of evidence, his oversight has not prejudiced the petitioner. The AAO has reviewed the counselor's assessment, the letters from the Oregon Department of Justice, current and prior counsel's claims and the other relevant evidence on appeal. As explained above, the preponderance of the relevant evidence does not show that the petitioner has suffered substantial physical or mental abuse as the result of his victimization under the factors and standard explicated in 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.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ Counsel asserts that it was improper for the director to conclude that the petitioner's previous attorney's legal brief had no evidentiary value. See Brief on Appeal at 14-15. Although the director should have considered the petitioner's previous attorney's brief, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).