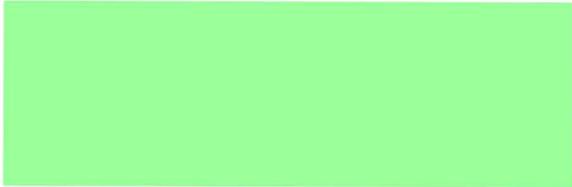


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

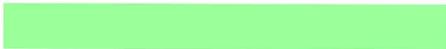
(b)(6)



Date: **FEB 20 2014** Office: VERMONT SERVICE CENTER



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 (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 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 because the petitioner did not establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, counsel submits a brief and a statement from the petitioner's wife.

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

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 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 petitioner is a native and citizen of the Philippines who entered the United States on or about September 26, 1998, on a D-1 crewmember visa. He filed the instant Form 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 January 25, 2011. On July 19, 2011, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity, an explanation of the petitioner's culpability in the qualifying criminal activity, a copy of his passport, and evidence in support of his waiver for his grounds of inadmissibility. Counsel responded to the RFE with an updated statement from the petitioner 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, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

Claimed Criminal Activity

In his statements, the petitioner recounted his former place of employment, [REDACTED], was investigated and raided by the Federal Bureau of Investigations (FBI) for immigration and insurance fraud. The petitioner was a senior employee of [REDACTED] in charge of billing. He claims that his former employer controlled him and his wife because he had filed an Immigrant Petition for Alien Worker (Form I-140) for them. The petitioner was initially charged with the owner of [REDACTED] but their cases were severed after the petitioner agreed to help the FBI and the U.S. Attorney's Office in prosecuting his former employer. He states that his

former employer tried to convince him not to cooperate with the FBI in their investigation of immigration and insurance fraud, suggested that he leave the country, and told him to destroy any evidence he had at his desk or at home regarding the fraud. During his trial, the petitioner's former employer attempted to blame him for the immigration and insurance fraud. He notes that it was "frightening and stressful to become a witness against [his] former boss," but after testifying against him, his former employer was convicted of obstruction of justice, wire fraud, harboring illegal aliens, and visa fraud. The petitioner was convicted of wire fraud. He explains that he has been affected "emotionally and physically."

The Form I-918 Supplement B that the petitioner submitted was signed by Assistant U.S. Attorney S [REDACTED] U.S. Attorney's Office (certifying official), on October 18, 2010. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as witness tampering. In Part 3.3, the certifying official refers to Title 18 United States Code (U.S.C.) § 1512(c)(1), obstruction of justice, as the criminal activity that was investigated or prosecuted.¹ At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner testified that his former employer directed him "to commit fraud upon insurance companies (charged as wire fraud) and later encouraged [the petitioner] to leave the area and refuse to testify against" him. The petitioner's former employer was "convicted of multiple counts of wire fraud, harboring illegal aliens, visa fraud, and obstruction of justice." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "reports he has suffered emotional and psychological injury based on [his former employer's] direction to [the petitioner], first, to commit fraud upon insurance companies, and later [the petitioner's former employer's] direction to [the petitioner] to leave the country and not testify against him."

Victim of Qualifying Criminal Activity

The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. The certifying official indicated that the petitioner was a victim of witness tampering and he listed the statutory citation for obstruction of justice as the crime that was investigated. Both witness tampering and obstruction of justice are qualifying crimes. The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9.

¹ 18 U.S.C. § 1512 states, in pertinent part:

(c) Whoever corruptly –

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; . . .

shall be fined under this title or imprisoned not more than 20 years, or both.

In her appeal brief, counsel contends that the director erred in finding the petitioner was not a victim of witness tampering because there was no evidence of “threats of harm” against the petitioner by his former employer. She states that there is no requirement that a victim of witness tampering suffer “threats of harm.” The record establishes that the certifying official investigated the qualifying crime of obstruction of justice, under U.S.C. § 1512(c)(1), and there is no requirement of “threats of harm” under this statute. Counsel claims that the petitioner was the victim of witness tampering because he suffered direct and proximate harm because of his former employer’s “threats against him and his family if he did not agree to destroy evidence, flee the country, and lie to the FBI.” She indicates that the petitioner’s “stress and fear of retaliation” led to his physical and mental health problems. Here, the Form I-918 Supplement B and supporting evidence establish that the petitioner was the victim of obstruction of justice, a qualifying crime under section 101(a)(15)(U)(iii) of the Act, and the relevant evidence shows that he was directly and proximately harmed by the qualifying crime. Accordingly, he has established the requisite victimization. The director’s determination to the contrary is hereby withdrawn.

Substantial Physical or Mental Abuse

Although the petitioner has established that he is a victim of a qualifying crime; he has not shown 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. 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 her declaration dated March 19, 2013, the petitioner’s wife reports that when the petitioner’s former employer threatened him not to testify, he suffered extreme stress, anxiety, depression, he had trouble sleeping, started smoking a lot, and he developed high blood pressure, high cholesterol, and diabetes. In his declaration dated January 10, 2011, the petitioner explains that his former employer “was influential, powerful, with money and connections,” and he felt “very vulnerable.” In his affidavit dated October 11, 2011, [REDACTED] states that during his representation of the petitioner in trial, the petitioner suffered emotionally and physically, was under “tremendous stress,” and feared his former employer would retaliate against him. The petitioner indicates that he is suffering psychologically, emotionally, and physically as a result of his victimization by his former employer. The petitioner’s wife states that even though the petitioner’s former employer was convicted and went to jail, the petitioner still does not sleep well, he is depressed, anxious, nervous, and worried that his former employer will retaliate against him. The petitioner states the stress has affected him emotionally and physically. Medical documents in the record, including a letter from [REDACTED], establish that the petitioner suffers from high blood pressure, high cholesterol, and diabetes, and he is taking several medications for his medical conditions. Counsel claims that the petitioner’s medical issues are related to his victimization; however, the medical documents and letter from [REDACTED] do not link the petitioner’s medical issues to his victimization by his former employer.

In her psychological evaluation, [REDACTED], a clinical psychologist, diagnoses the petitioner with chronic post-traumatic stress disorder (PTSD) and dysthymic disorder. She notes that “serving jail time and fearing retaliation” by his former employer has “resulted in major trauma and psychological symptoms” for the petitioner. She also states that the petitioner suffered “significant mental abuse” because of the actions of his former employer. Counsel states that I [REDACTED] “directly links” the petitioner’s [REDACTED] and depression to his former employer’s “efforts to persuade [the petitioner] not to testify” against him. However, [REDACTED] lists various reasons for the petitioner’s PTSD and depression. She notes that the petitioner grew up in “significant poverty” and was physically abused by his father, especially when he attempted to protect his mother from his abusive father. In addition, [REDACTED] reports that the petitioner recently lost his home in a fire which contributes to his psychological state, “aggravating his nightmares and insomnia.” She also reports that the petitioner feels “hopelessness and despair” over his criminal record, which will affect his future career goals, and he feels shame for the years he participated in the insurance fraud with his former employer.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of being a victim of obstruction of justice. Although I [REDACTED] diagnoses the petitioner with PTSD and depression, she indicates that there are other significant contributing factors to his conditions, including his history of child abuse, the loss of his home in a fire, and his criminal record. In addition, neither the petitioner, his wife, nor [REDACTED] probatively discuss any effects the petitioner has suffered as a result of his victimization other than the petitioner’s symptoms of insomnia and nightmares, which do not qualify as permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. The record does not show that the severity of the harm and duration of the infliction of the harm are sufficient to establish substantial abuse. While we do not minimize the petitioner’s victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has demonstrated that he possessed information about the crime and was helpful in the investigation or prosecution of the crime, which occurred in the United States. Accordingly, the petitioner meets the eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act. The petitioner has also established that he was the victim of the qualifying criminal activity of obstruction of justice. However, the petitioner has not demonstrated that as a result of his victimization, he suffered substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act.²

² In addition, the petitioner is inadmissible to the United States, and his Form I-192 was denied on February 20, 2013.

(b)(6)

NON-PRECEDENT DECISION



Page 8

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. Accordingly, the appeal will be dismissed.

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