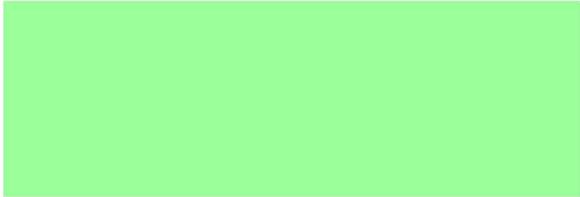


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

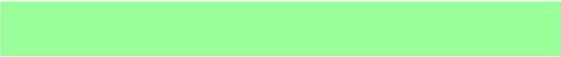


U.S. Citizenship
and Immigration
Services

(b)(6)

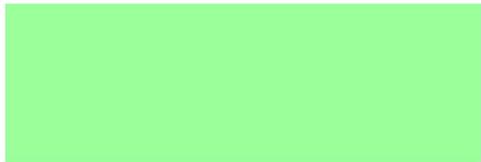


Date: **JUL 28 2014** Office: VERMONT SERVICE CENTER FILE: 

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:

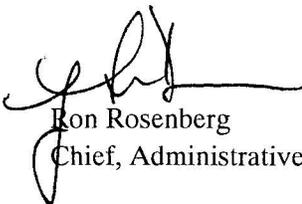


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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 denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity and consequently did not meet any of the requirements for U nonimmigrant classification. On appeal, counsel submits a brief.

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

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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 Mexico who claims to have entered the United States on November 15, 1996 without admission, inspection or parole. The petitioner 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 20, 2012. On the same day, she filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192), to waive her ground of inadmissibility. On March 6, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that she suffered resultant substantial physical and mental abuse. The petitioner responded to the RFE with a statement and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the crime of theft under Colorado law is substantially similar to extortion, a qualifying crime, and the petitioner has suffered substantial mental abuse as a result of her victimization.

Claimed Criminal Activity

In her statements, the petitioner claimed that that because of her immigration status, she was unable to obtain a driver's license in the United States. She recounted that in the summer of 2011, her cousin introduced her to a woman who claimed that she worked at the Department of Motor Vehicles and could supply legal drivers' licenses. On May 2, 2011, the petitioner and eight other people met with the woman and they provided her with their identification, personal information, and \$1,000.00 each to process their licenses. After approximately one month, the petitioner's cousin contacted the woman to find out where their drivers' licenses were, and the woman claimed it was not her fault that the licenses had not arrived. The petitioner and her cousin met with the woman and asked for their money back, and the woman stated she did not have their money. They threatened to call the police, and the woman claimed she would contact immigration and "cause big problems for" them. The petitioner's cousin called the police and when the police arrived, they gave their statements and the woman was arrested.

The Form I-918 Supplement B that the petitioner submitted was signed by Chief Deputy District Attorney [REDACTED] Colorado, District Attorney's Office (certifying official), on October 27, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as extortion. In Part 3.3, the certifying official refers to Colorado Revised Statutes (C.R.S.) §§ 18-4-401(1)(2)(c) and 18-8-113, theft and impersonating a public servant, respectively, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the defendant, acting as a representative of the Department of Motor Vehicles, "collected \$8,000.00 in cash from eight people after she promised to provide certified Colorado driver's licenses for them. [The petitioner] is one of the eight

people who paid \$1,000.00 for a certified driver's license." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "has sustained emotional trauma."

Analysis

Theft under Colorado Law is Not Substantially Similar to Qualifying Criminal Activity

The Form I-918 Supplement B indicates that the crimes of theft and impersonating a public servant, under C.R.S. §§ 18-4-401(1)(2)(c) and 18-8-113, were investigated. On appeal, counsel does not assert that the crime of impersonating a public servant is similar to a qualifying crime, but focuses on theft under C.R.S. § 18-4-401(1). Counsel claims that theft is substantially similar to extortion. The crime of theft is not specifically listed as a qualifying crime 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). Thus, the nature and elements of the crime investigated, theft, must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 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 Colorado law: "[a] person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception; or receives, loans money by pawn or pledge on, or disposes of anything of value or belonging to another that he or she knows or believes to have been stolen." Colo. Rev. Stat. § 18-4-401(1) (West 2014). In pertinent part, under Colorado law, a person is guilty of extortion if "[t]he person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person." Colo. Rev. Stat. § 18-3-207(1)(a) (West 2014). In addition, "[a] person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, threatens to report to law enforcement officials the immigration status of the threatened person or another person." Colo. Rev. Stat. § 18-3-207(1.5) (West 2014).

No elements of theft under Colo. Rev. Stat. § 18-4-401(1) are similar to extortion under Colo. Rev. Stat. §§ 18-3-207(1)(a), (1.5). The statute investigated in this case involves a person knowingly obtaining, retaining, or exercising control over anything of value without authorization or by threat or deception; or receiving, loaning, or disposing anything of value or belonging to another that he or she knows or believes to be stolen. Extortion involves a person, without legal authority and with the intent to induce another to perform or refrain from performing a lawful act, making a substantial threat to confine or restrain, cause economic hardship or bodily injury, or damage to the property or reputation of the threatened person. As noted above, the extortion statute contains an element of inducement or coercion while the theft statute does not. While at Part 3.1 of the Form I-918 Supplement B, the certifying official indicated that the petitioner was the victim of extortion, the record, which includes the police report accompanying the Form I-918

Supplement B, contains no evidence that the certifying official or any other law enforcement entity detected or investigated an extortion crime under Colorado law where the petitioner was the victim.

Counsel claims that although theft and impersonating a public official were prosecuted, the certifying official determined that extortion occurred. In his affidavit dated March 15, 2013, the certifying official indicates that the petitioner “was the victim of violations of Federal, State or local criminal offenses, which are *similar* to ‘extortion’.” (Emphasis in original). The certifying official does not, however, explain the similarities between the extortion statute and the criminal statutes listed on the Form I-918 Supplement B. More importantly, while the certifying official states that the petitioner was the victim of crimes “similar” to extortion, the regulation at 8 C.F.R. § 214.14(a)(9) requires the nature and elements of the offenses investigated or prosecuted to be *substantially* similar to a statutorily enumerated criminal activity.

The authority to determine the petitioner’s eligibility for U nonimmigrant classification rests with USCIS, not the certifying agency. Section 101(a)(15)(U)(i) of the Act. USCIS also determines “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).¹ Accordingly, the certifying official’s statement that the crimes of which the petitioner was a victim are similar to extortion is insufficient to demonstrate that the petitioner was the victim of qualifying criminal activity.

Counsel indicates that both the theft and extortion statutes under Colorado law contain an element of “threat.” She claims that under the extortion statute, a person makes a threat to cause economic hardship, bodily injury, or damage to property; and under the theft statute, a person can deprive another of something of value by threat. She also claims that the “theft and extortion statutes both contain an element of inducing a person to do something against his or her will.” Counsel states that the defendant threatened to report the petitioner to the immigration service, and the petitioner was induced from performing a lawful act, which was having her \$1,000.00 returned to her. Other than the statements by the petitioner and counsel, the record does not include any evidence showing that the defendant threatened to report the immigration status of the petitioner to law enforcement. In addition, the extortion statute under Colorado law requires the element of threat while the theft statute does not. Moreover, as stated above, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements

¹ As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence To Satisfy the Eligibility Requirements

While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule.

of the crime that was investigated and one of the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). Counsel has not established substantial similarities in the nature and elements of C.R.S. §§ 18-4-401(1) and 18-3-207(1)(a), (1.5).

In this case, the relevant evidence shows that theft and impersonating a public servant were the only crimes of which the petitioner was a victim. Because theft and impersonating a public servant are not listed at section 101(a)(15)(U)(iii) of the Act, and the petitioner failed to demonstrate that the nature and elements of theft under C.R.S. § 18-4-401(1) are substantially similar to the qualifying crime of extortion, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act, the petitioner has not demonstrated that she was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

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

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she 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 section 101(a)(15)(U)(i)(III) of the Act.

Jurisdiction

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that 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, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

Although the petitioner was helpful to the [REDACTED] Colorado, District Attorney's Office in the investigation of the crimes committed against her, she has not demonstrated that the offenses of theft and impersonating a public servant, under C.R.S. §§ 18-4-401(1) and 18-8-113, are qualifying crimes or that

theft under C.R.S. § 18-4-401(1) is substantially similar to extortion or any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offenses of which she was the victim are qualifying criminal activities prevents her from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

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.