

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 17 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 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 he was a victim of qualifying criminal activity or that he had suffered resultant substantial physical or mental abuse. The petitioner filed a motion to reopen and reconsider the director's decision. The director granted the motion but ultimately affirmed her prior determination that the petitioner did not demonstrate that he was a victim of qualifying criminal activity. On appeal, counsel submits a brief, additional evidence, 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;

Witness tampering is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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

- (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.

In addition, 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[.]

* * *

Further, 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 India who initially entered the United States in November 2006 on an H-2B nonimmigrant visa. In May 2009, the petitioner was paroled into the United States. The petitioner filed the instant Form I-918 U petition with an accompanying I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on June 30, 2011. On February 22, 2012, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity, evidence that the petitioner was directly or proximately harmed by the perpetration of witness tampering, and evidence that he was a direct or indirect victim of witness tampering. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner filed a motion to reopen and reconsider the director's decision, which she granted but ultimately affirmed her prior determination that the petitioner did not demonstrate that he was a victim of qualifying criminal activity. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner has suffered substantial physical or mental abuse as a result of being a victim of witness tampering and he cooperated with law enforcement in investigating the criminal activity.

Claimed Criminal Activity

In his declarations, the petitioner recounted that in November 2006, he was admitted to the United States on an H-2B visa to work as a pipefitter for S-I.¹ While working for S-I, some of the other H-2B visa workers from India filed a civil lawsuit against S-I, the recruiters, and other people who were involved in bringing the Indian workers to the United States. In December 2008, he returned to India. In May 2009, he was paroled into the United States to be a witness for Immigration and Customs Enforcement (ICE) because he thought the "allegations against [S-I] were lies" and he wanted to tell the truth. After giving his statement to ICE and testifying in a deposition, he was harassed by his former co-workers, who were plaintiffs in the civil lawsuit against S-I.

He recounts that in November 2008, one of his co-workers, who was also cooperating with ICE, discovered that some of the plaintiffs in the civil lawsuit were collecting money to have his co-worker's family killed in India. The petitioner began to worry about his own family in India. His co-worker returned to India but was paroled into the United States in May 2009. In May 2009, one of his co-workers received a phone call from one of the plaintiffs in the civil lawsuit threatening to kill him. Even though he personally did not

¹ Name of company withheld to protect identity.

receive any threatening phone calls, the petitioner is concerned that he could also be killed. On another occasion in November 2011, while the petitioner was at the Indian Embassy renewing his children's passports, one of the plaintiffs approached him, began yelling at him and calling him names. Other people heard the plaintiff insult him and the petitioner was "very nervous and upset."

The Form I-918 Supplement B that the petitioner submitted was signed by Special Agent-In-Charge [REDACTED], Homeland Security Investigations (certifying official), on May 23, 2011. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as witness tampering. In Part 3.3, the certifying official referred to Title 18 United States Code (U.S.C.) § 1512, witness tampering, 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 indicated that the petitioner "is a witness in an ongoing visa fraud investigation. [The petitioner] is receiving harassing telephone calls and visits by other Indian national in attempts to sway his cooperation, and future testimony, with the investigation." In addition, the certifying official noted that the petitioner's family members, who reside in India, are "receiving implied threats because of the [petitioner's] cooperation." At Part 3.6, the certifying official did not indicate that the petitioner suffered any injury.²

Analysis

Victim of Qualifying Criminal Activity

In order to establish that he was the victim of the qualifying crime of witness tampering, the petitioner must demonstrate that the perpetrator of the witness tampering committed such crime, at least in principal part, as means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice 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. 8 C.F.R. § 214.14(a)(14)(ii). In his affidavit dated March 12, 2012, the petitioner explains that the perpetrators of the witness tampering are his former co-workers who are suing S-I-. The petitioner claims that he is being threatened by these former co-workers to keep him "from testifying in the ICE criminal proceedings" because the petitioner's testimony will "negatively impact their case" and "expose their many lies including lies they told to obtain their 'T' visas." Neither the petitioner nor the certifying official states that the petitioner is being or has been harassed or threatened by S-I- and its associates, or anyone else being targeted by the ICE investigation.

The petitioner's former co-workers are the perpetrators of the witness tampering and, therefore, the petitioner cannot satisfy 8 C.F.R. § 214.14(a)(14)(ii). First, 8 C.F.R. § 214.14(a)(14)(ii)(B)(I) is not satisfied because the petitioner's former co-workers are not being investigated, arrested, or prosecuted for other criminal activity by ICE or any other law enforcement entity. The record shows that the certifying official is investigating visa fraud by S-I- and its associates, who were involved in bringing the Indian workers to the United States. The certifying official presented no evidence that the petitioner's former co-workers are or have been under investigation for any unlawful activity. Therefore, the witness tampering was not done to "avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the

² The fraud investigation referred to by the certifying official involves S-I- and its associates.

perpetrator [of the witness tampering] for other criminal activity.” (Emphasis added). Second, the petitioner cannot satisfy 8 C.F.R. § 214.14(a)(14)(ii)(B)(2) because there is no evidence that the petitioner’s former co-workers are manipulating the legal system to further abuse, exploit or control the petitioner.

We recognize that that petitioner has been emotionally and physically impacted by the harassment and intimidation by his former co-workers; however, he has failed to demonstrate that he is a victim of witness tampering under the pertinent definition at 8 C.F.R. § 214.14(a)(14)(ii) because the witness tampering was not committed at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring his former co-workers to justice for other criminal activity; or (2) to further his former co-workers’ abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. Consequently, the petitioner does not meet the definition of a victim of witness tampering for U nonimmigrant classification at 8 C.F.R. § 214.14(a)(14)(ii). The petitioner has also failed to demonstrate that he is the victim of any other qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of a qualifying crime, 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, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, we shall not further address this issue.

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). The petitioner has failed to establish that he was the victim of a qualifying crime. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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