



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 26 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: he was the victim of qualifying criminal activity; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; or he was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a brief and additional evidence.

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: . . . 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:

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: . . .

obstruction of justice 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.

* * *

(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 Mexico who claims to have entered the United States in February 1999 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 May 14, 2012. On June 24, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity, requesting a detailed victim statement. The director also noted that the petitioner was inadmissible to the United States, and requested that the petitioner submit an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On July 23, 2013, the petitioner, through counsel, responded to the RFE with a Form I-192 and additional evidence. On August 16, 2013, the director issued another RFE that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered resultant substantial physical and mental abuse. The petitioner, through counsel, responded to the RFE with

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, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner is a victim of obstruction of justice and the regulation does not require the petitioner to have "been directly and proximately harmed by the obstruction of justice."

Claimed Criminal Activity

In his statements, the petitioner recounted that on July 27, 2008, he and some of his co-workers were driving home after work, when they noticed they were being followed by a black truck. When his co-worker slowed down to allow the truck to pass them, a green car came up beside them and the occupants of the car began yelling obscenities and throwing beer bottles at them. The petitioner and his co-workers tried to flee but the car and black truck pursued them and tried to run them off the road by crashing into their vehicle. Another truck started following them and when this second truck hit their vehicle, the petitioner and his co-workers were able to get out of their vehicle and started running. Some of the occupants from the other vehicles started chasing them and caught two of the petitioner's co-workers. At this point, the police arrived.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] prosecuting attorney, [REDACTED] County, Washington, Prosecutor's Office (certifying official), on March 29, 2012. The certifying official lists the criminal activities of which the petitioner was a victim at Part 3.1 as obstruction of justice and reckless driving. In Part 3.3, the certifying official refers to Revised Code of Washington (R.C.W.) §§ 9A.76.020 (obstructing a law enforcement officer), 46.61.500 (reckless driving), 46.61.502 (driving under the influence), and 46.20.342 (driving while license invalidated), 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 on July 27, 2008, the petitioner "was deliberately rammed by the driver of another vehicle. The defendant . . . then threatened [the petitioner] and escalated a volatile situation, resulting in an obstruction charge." At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

Analysis

The Petitioner was Not a Victim of Obstruction of Justice

Although obstruction of justice is a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act, the petitioner must demonstrate that he has been directly or proximately harmed by the perpetrator, and the perpetrator committed obstruction of justice, 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 its 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). As explained in the preamble to the U nonimmigrant visa interim rule:

[I]n order to be classified as a victim under Federal law, an individual must suffer direct and proximate harm. Therefore, USCIS considered which categories of people would suffer direct and proximate harm from witness tampering, obstruction of justice, and perjury. *USCIS identified one such category as individuals who are harmed when a perpetrator commits one of the three crimes in order to avoid or frustrate the efforts of law enforcement authorities.* USCIS identified another such category as individuals who are harmed when the perpetrator uses the legal system to exploit or impose control over them.

(Emphasis added). 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of obstruction of justice; however, neither he nor the petitioner has presented any evidence that the petitioner was harmed when the perpetrator obstructed justice to avoid or frustrate the certifying agency's investigation into the traffic incident. The petitioner is, therefore, not the victim of the qualifying crime of obstruction of justice. The petitioner has failed to establish that he 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 he was the victim of qualifying 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 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 he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such a crime or 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 he was the victim of qualifying 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.

Jurisdiction

As the petitioner did not establish that he was the victim of qualifying criminal activity, he 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] County, Washington, Prosecutor's Office in the investigation of the crimes committed against him, he 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.

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.