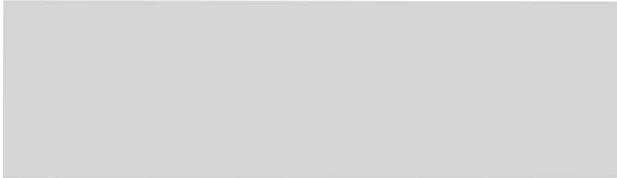


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)

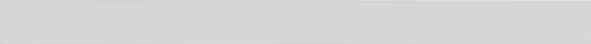


DATE: **APR 09 2015**

Office: VERMONT SERVICE CENTER

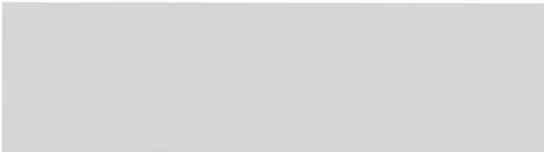
FILE: 

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 or 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 Acting 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 a victim of qualifying criminal activity and therefore also failed to demonstrate the remaining eligibility requirements. On appeal, the petitioner 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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder;

felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

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 regulations governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) provide the following definition of a victim:

(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.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

We conduct appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). 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).

<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have last entered the United States on December 28, 2008, without inspection, admission, or parole. In May 2011, the petitioner's minor son was the victim of criminal threats in violation of Cal. Penal Code § 422. The petitioner filed the instant Form I-918 U petition on August 7, 2012. The director issued a request for evidence (RFE) that the petitioner was the victim of qualifying criminal activity, to which the petitioner responded with a brief and additional evidence. The director found the evidence insufficient to establish that the petitioner was the victim of a qualifying crime. Therefore, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

*Claimed Criminal Activity*

In his statements, the petitioner claims that on May 23, 2011, boys from school threatened his son, who was twelve years old at the time, and forced him to set a palm tree on fire. The petitioner states that the boys took his son's school binder and threatened to stab him if he did not set the tree on fire. According to the petitioner, his son took the threats seriously because the same boys had bullied and caused physical injury to him in the past.

The Form I-918 Supplement B that the petitioner submitted below was signed on February 9, 2012, by [redacted] Fire Captain, [redacted] California, Fire Authority (certifying official). At Part 3.1 of the petitioner's Form I-918 Supplement B, the certifying official listed the criminal activity that was investigated or prosecuted as "Other: criminal threats." At Part 3.3, he cited Cal. Penal Code § 422, criminal threats, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. The certifying official states at Part 3.5 that the petitioner's minor son "was threatened . . . to commit a crime which would result in death and great bodily injury to [the petitioner's son]." At Part 3.6, the certifying official indicates that "[n]o injuries were sustained but [the] victim was in fear of [sic] his life and safety."

*Analysis*

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a victim of a qualifying crime or criminal activity.

The Form I-918 Supplement B indicates that the petitioner's minor son was the victim of criminal threats. Pursuant to 8 C.F.R. § 214.14(a), the petitioner may be considered an indirect victim of a qualifying crime for purposes of establishing eligibility for U nonimmigrant classification if the crime of which his minor son was a victim, criminal threats, is a qualifying crime, and he meets the other eligibility criteria. The petitioner asserts that criminal threats in violation of Cal. Penal Code § 422 is substantially similar to the qualifying crime of extortion.

The crime of criminal threats 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 criminal threats offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

California law provides, in pertinent part, the following regarding the crime of criminal threats:

- (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Cal. Penal Code § 422 (West).

Extortion in California is defined as "the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." Cal. Penal Code § 518.

California law also provides:

Fear, such as will constitute extortion, may be induced by a threat of any of the following:

1. To do an unlawful injury to the person or property of the individual threatened or of a third person.
2. To accuse the individual threatened, or a relative of his or her, or a member of his or her family, of a crime.
3. To expose, or to impute to him, her, or them a deformity, disgrace, or crime.
4. To expose a secret affecting him, her, or them.
5. To report his, her, or their immigration status or suspected immigration status.

Cal. Penal Code § 519.

The nature and elements of criminal threats under Cal. Penal Code § 422 are not substantially similar to the nature and elements of extortion under Cal. Penal Code §§ 518-19. 8 C.F.R. § 214.14(a)(9). The petitioner correctly notes that both crimes involve the use of threats to induce fear in the victim. Cal. Penal Code §§ 422, 518-19. However, the crime of extortion includes the additional requirements of “obtaining of property from another, with his consent” or “under color of official right.” Cal. Penal Code § 518. These requirements are not included in the crime of criminal threats, so the elements of the two crimes are not substantially similar. The certifying official also did not indicate on the Form I-918 Supplement B that the crime investigated or prosecuted was extortion. Although the petitioner alleges that the perpetrators took his son’s school binder and his “goodwill,”<sup>2</sup> the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crime that was investigated with a qualifying crime. See 8 C.F.R. § 214.14(a)(9). The petitioner has not demonstrated that the nature and elements of the crime of criminal threats investigated in his case, Cal. Penal Code § 422, are substantially similar to extortion under Cal. Penal Code §§ 518-519 or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner is not the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i) of the Act.

*Conclusion*

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has failed to show that he can satisfy any of the criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. Therefore, the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and his petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

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

<sup>2</sup> The petitioner has not established that “goodwill” can be considered property in this context, but a discussion of that issue is moot as the inquiry here is not fact-based, as stated above.