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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

Date:

APR 13 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 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

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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 that he was helpful in the investigation or prosecution of qualifying criminal activity. 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;

Felonious assault, blackmail, extortion, and witness tampering are listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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.

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

* * *

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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."

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 . . . :

(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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States on June 15, 1954 pursuant to his marriage to a United States citizen. He was removed to Mexico in July 1998 following his conviction under 18 U.S.C. §§ 841(a)(1) (possession with intent to distribute cocaine) and 8 U.S.C. §§ 5313(a), 5322(a) and 5324(3) (structuring financial transactions). On September 27, 2002, the petitioner re-entered the United States pursuant to a humanitarian parole with authorization to remain until October 30, 2002. In September 2010, the prior order of removal was re-instated and the petitioner was removed to Mexico. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 14, 2014. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver) on the same day.¹ On May 19, 2014, the director issued a Request for Evidence (RFE) requesting evidence

¹ The petitioner filed a previous Form I-918 U petition with accompanying Form I-918 Supplement B and Form I-192 waiver on December 12, 2011. That petition was denied by the director for being abandoned; the petitioner appealed the director's decision and we rejected the appeal on November 15, 2013.

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that the crime listed on the law enforcement certification was a qualifying crime and that any investigated crime that occurred outside of the United States was subject to a statute providing for extraterritorial jurisdiction. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that he suffered substantial physical or mental abuse as a result of being a victim of a crime for which there is extraterritorial jurisdiction.

Claimed Criminal Activity

In his declaration, the petitioner recounted that on March 14, 2008, he was shopping in [REDACTED] when he accidentally dropped a money clip out of his pocket containing \$1,400. After realizing the money was missing, the petitioner searched but was unable to find the money. He returned to the store the next day and the store manager reviewed the surveillance tape, which showed that another customer (the suspect) had picked up the petitioner's money and put it in her purse. The petitioner reported the crime to the police. The petitioner was subsequently removed to Mexico where he saw the suspect's daughter. The petitioner stated that in Mexico, the suspect's family members and friends have harassed him, threatened to kidnap and physically harm him, and damaged his car repeatedly. He stated that he attempted to report these crimes to the Mexican police, but that they declined to take a report or investigate without payment of a bribe.

The petitioner submitted a Form I-918 Supplement B signed by [REDACTED] a detective with the [REDACTED] California Police Department (certifying official), on December 16, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as blackmail, extortion, felonious assault, witness tampering, and felony theft. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 485 (punishment for theft) 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] was the victim of theft in the United States. Once he was removed to Mexico, he began to be extorted, black mailed, and was assaulted by the alleged defendants in the above referenced matter." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official left the space blank.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

No Qualifying Criminal Activity was Certified

The Form I-918 Supplement B and incident report from the [REDACTED] Police Department indicate that theft was investigated.² The crime of theft is not specifically listed as a qualifying crime at section

² Under Cal. Penal Code, "[o]ne who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use or to the use of another person not

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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 theft offense 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 petitioner has made no claim that theft in this case is substantially similar to a qualifying crime.

Instead, the petitioner refers to Part 3.1 of the Supplement B, which indicates that blackmail, extortion, felonious assault, and witness tampering also occurred. At Part 3.4, the certifying official indicated that the criminal activity violated a federal extraterritorial jurisdiction statute and cited 18 U.S.C. § 1512(h) (tampering with a witness, victim, or an informant).³ In Part 3.5, the certifying official stated that the petitioner was extorted, blackmailed and assaulted in Mexico following “the above referenced matter,” referring to the theft charge investigated by the [REDACTED] Police Department. The Form I-918 Supplement B did not indicate that the [REDACTED] Police Department was investigating witness tampering or any crime other than theft under the California Penal Code. The police reports accompanying the Form I-918 Supplement B detail only the theft occurrence. The reports also mention contact with a member of the [REDACTED] and U.S. Border Patrol; however, the interaction with the additional law enforcement agencies is detailed only as to investigation of the theft offense. An August 2, 2011 letter from the certifying official does not mention that he or his office was investigating any of these other crimes and refers only to the theft that occurred within his jurisdiction. The letter states that the certifying official “was alerted to [the petitioner’s] situation in [REDACTED]” however, the letter does not indicate that the situation included any additional crimes that his office was investigating. The evidence in the record indicates that the [REDACTED] Police Department investigated a theft offense committed against the petitioner.

There is no evidence that the certifying agency investigated blackmail, extortion, felonious assault, or witness tampering against the petitioner,⁴ and the certifying official does not explain why at Part 3.1 he checked those corresponding boxes on the Form I-918 Supplement B indicating that the petitioner was the victim of those criminal activities.⁵ Part 3.3 of the Form I-918 Supplement B specifically requests the statutes under which the certifying agency undertook an investigation. The certifying official listed only the California Penal Code theft statute in Part 3.3. Although the certifying official states in Part 3.5 that the petitioner was subject to extortion, blackmail, and assault in Mexico, the certifying official gives no indication that any of those crimes were being investigated or prosecuted by the [REDACTED] Police Department. As stated above, in Part 3.3 the certifying official indicated the theft offense was the only

entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.” Cal. Penal Code § 245 (West 2014).

³ 18 U.S.C. § 1512 provides for fines and/or imprisonment for those persons who intimidate, threaten, harass, or corruptly persuade someone from participating in a legal or police proceeding. Section h of the statute states: “There is extraterritorial Federal jurisdiction over an offense under this section.” Witness tampering is a crime specifically listed in 101(a)(15)(U)(iii) of the Act as a qualifying crime.

⁴ On appeal, the petitioner provides the text of the corresponding federal statutes for blackmail and extortion; however, no evidence appears in the record to indicate that the certifying agency investigated activities under the statutes cited.

⁵ We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

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crime his office investigated. On appeal, the petitioner states that the [REDACTED] Police Department has worked with federal and international counterparts in the U.S. Customs and Border Protection and the [REDACTED] to investigate the criminal activity perpetrated against him. The evidence in the record establishes, through the police reports, that these other agencies were involved in the investigation of the theft charge; however, no evidence in the record indicates that the [REDACTED] Police Department or the other agencies investigated any other crimes.⁶

The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

In his December 16, 2013 affidavit, the petitioner stated that he saw the daughter of the woman who took his money in the United States while shopping in [REDACTED] in Mexico. He stated that she immediately recognized him and threatened to harm him if he did not drop the charges against her mother. He stated that since that time, the woman's family and friends have harassed him, threatened to kidnap and physically harm him, and damaged his vehicle. The affidavit states that the petitioner has moved three times over the course of a year in order to avoid harassment, abuse, and vandalism. He further states that he cannot sleep, suffers from terrible nightmares, and is afraid to leave his house for fear that he will encounter the woman's family or friends while out. He states that he is anxious and nervous, has no energy, feels sad all the time, and is extremely irritable. The petitioner also states that he feels extremely lonely and isolated from his community in the United States, where he resided for 44 years before being removed for the first time in 1998. He notes that his entire family lives in the United States and he is afraid of being afflicted by illness or injury due to his age without family members close to assist him. He also stated that he is unable to find a job due to his age, lack of Mexican employment history, and lack of education and that he is afraid that he will be unable to provide the financial support to his family in the United States as he has been accustomed to doing.

The petitioner submitted a letter from [REDACTED] a psychologist, which states that the petitioner has suffered from depression and anxiety since his removal to Mexico from the United States. He further states that the petitioner has feelings of loneliness, anxiety, and fear due to his deportation and the threats received in his time in Mexico.

The preponderance of the evidence submitted below and on appeal fails to establish that the petitioner has suffered substantial mental abuse as a result of him being a victim of a qualifying crime. First, the petitioner has not established his victimization, as theft is not a qualifying crime, substantially similar to a qualifying crime, and he has not shown that any qualifying crime was investigated or prosecuted. Second, even if he had demonstrated his victimization, the harm that he suffered would not amount to substantial abuse.

⁶ The petitioner noted on appeal that the director stated that the [REDACTED] Police Department does not have the authority to charge federal crimes. The petitioner is correct in recognizing that the authority to charge for a federal criminal violation is not required to establish either whether the activity is a qualifying crime or whether jurisdiction exists over that activity. Although the [REDACTED] Police Department need not have authority to charge for a criminal violation, no evidence has been submitted to demonstrate that the Department investigated the activities that might constitute a violation of any federal statute.

Although Dr. [REDACTED] states that the petitioner is suffering from “emotional conflicts such as depression and anxiety,” he does not directly attribute these conditions to the criminal activity experienced by the petitioner as opposed to being removed from the United States, which includes his family and community. Dr. [REDACTED] states that the petitioner’s mental health issues would be alleviated by being allowed to return to the United States to allow him to “cope in a healthy way in his personal, family, work and society.” Section 101(a)(15)(U)(i)(I) of the Act provides that the abuse must result from the qualifying criminal activity, and Dr. [REDACTED] evaluation does not sufficiently demonstrate that required causal connection. Consequently, as the record is presently constituted, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial abuse resulting from qualifying criminal activity.

Possession of Information Concerning Qualifying Criminal Activity

On appeal, the petitioner states that he has knowledge of the details of criminal activity and the Form I-918 Supplement B states that the petitioner has knowledge about the theft that occurred in California. As stated above, the Form I-918 Supplement B certifies only that the petitioner was a victim of theft, which is not qualifying criminal activity under the Act. 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

On appeal, the petitioner states that the certifying official stated on the Form I-918 Supplement B that he was helpful to the certifying agency and he thereby meets the helpfulness requirement of the Act. As stated above, 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 stated above, the only certified criminal activity in this case was theft under California law. Because no other criminal activity was certified on the Form I-918 Supplement B, we need no discuss whether any of the other potentially relevant statutes provide for extra territorial jurisdiction. As the petitioner did not establish that he was the victim of qualifying criminal activity, he 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

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.

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.