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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 1 1 2015

FILE #:
PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), finding that the petitioner did not establish that she was a victim of qualifying criminal activity and suffered substantial physical or mental abuse, and therefore could not demonstrate her eligibility for the remaining statutory 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[.]

As used in section 101(a)(15)(U)(i)(I) of the Act, the term "physical or mental abuse" is defined as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." 8 C.F.R. § 214.14(a)(8).

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 regulation at 8 C.F.R. § 214.14 also provides, in pertinent part, the following guidelines regarding the eligibility requirements for U nonimmigrant classification:

> (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;
>
> > * * *
>
> > (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[.]

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (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).

Facts and Procedural History

The petitioner is a native and citizen of Nepal who last entered the United States on October 3, 2003 as a B-1 nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on July 12, 2012. The director issued a request for evidence (RFE) that the petitioner was the victim of qualifying criminal activity, suffered substantial physical or mental abuse as a result, was helpful in the investigation or prosecution of the crime, and qualifies for a waiver of inadmissibility. The petitioner responded to the RFE with a brief and additional evidence. The director found the evidence insufficient to establish that the petitioner was the victim of a qualifying crime and suffered substantial physical or mental abuse as a result, and therefore found that she also could not meet the remaining statutory requirements. The director also found that the petitioner did not establish that she possessed information about the crime, was helpful to law enforcement in the investigation or prosecution, and was the victim of criminal activity that occurred in the United States or violated U.S. law. However, those latter findings were based solely on the conclusion that the petitioner was not the victim of a qualifying crime or criminal activity. The director denied the petition and the petitioner filed a timely appeal.

Certified Criminal Activity

The Form I-918 Supplement B was signed on May 7, 2012, by Chief Assistant Prosecutor, Prosecutor's Office, , New Jersey (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity of which the petitioner was a victim as "Obstruction of Justice," "Related Crime(s)," and "Other." At Part 3.3, the certifying official cited N.J. Stat. Ann. §§ 2C:20-4 (theft by deception) and 2C:21-22(b)(1) (unauthorized practice of law) as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. The certifying official stated at Part 3.5 that the perpetrator, M-A-,[1] pled guilty to theft by deception and unlawful practice of law, and that the petitioner was a victim of M-A-'s acts.

Qualifying Criminal Activity

The relevant evidence submitted below and on appeal does not establish that the petitioner was a victim of a qualifying crime or criminal activity.

In her brief on appeal, the petitioner asserts that she was the victim of a crime which was substantially similar to a qualifying crime. She argues that theft by deception and unauthorized practice of law under New Jersey law are substantially similar to obstruction of justice under federal law. She also contends that, although the Form I-918 Supplement B lists only theft by deception and unauthorized practice of

[1] Name withheld to protect the individual's identity.

law as the crimes of which M-A- was convicted, the related police reports and indictment list additional crimes that were investigated or prosecuted. The petitioner alleges that the director erred in considering only the crimes listed on the Form I-918 Supplement B rather than considering whether every crime mentioned in the police reports and conviction records was substantially similar to a qualifying crime. She argues that all of the statutes under which M-A- was charged "include activity involving some type of fraud or misrepresentation."

The crimes listed on the Form I-918 Supplement B, theft by deception and unauthorized practice of law, are not specifically listed as qualifying crimes 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 theft by deception or unauthorized practice of law 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.

Theft by deception in New Jersey involves the following:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> > a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
> >
> > b. Prevents another from acquiring information which would affect his judgment of a transaction; or
> >
> > c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
> >
> > The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

N.J. Stat. Ann. § 2C:20-4 (West 2015).

New Jersey law provides, in pertinent part, the following regarding unauthorized practice of law:

> b. A person is guilty of a crime of the third degree if the person knowingly engages in the unauthorized practice of law and:
>
> > (1) Creates or reinforces, by any means, a false impression that the person is licensed to engage in the practice of law. As used in this paragraph, "by any means" includes but is not limited to using or advertising the title of lawyer or attorney-at-law, or equivalent terms, in the English language or any other language, which mean or imply that the person is licensed as an attorney-at-law in the State of New Jersey or in any other jurisdiction of the United States . . . .

N.J. Stat. Ann. § 2C:21-22 (West 2015).

The petitioner argues that the crimes for which M-A- was convicted are substantially similar to obstruction of justice under federal law at 18 U.S.C.A. § 1001 (West 2006). Although New Jersey law contains a statute relating to obstruction of justice at N.J. Stat. Ann. § 2C:29-1 (obstructing administration of law or other governmental function), the petitioner does not assert that the crimes of which she was a victim are substantially similar to the New Jersey obstruction of justice crime. Instead, she argues on appeal that "a reference to the elements of the Federal Obstruction of Justice Statute is most relevant to understand the type of activity prohibited." Therefore, we focus our analysis on 18 U.S.C.A. § 1001, which provides, in pertinent part:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
>
> > (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> > (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> > (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined [or] imprisoned . . . .

The petitioner asserts that theft by deception under N.J. Stat. Ann. § 2C:20-4 is substantially similar to obstruction of justice under 18 U.S.C.A. § 1001 because it "criminalizes fraudulent conduct to obtain a benefit . . . . These elements parallel . . . 18 U.S.C.A. § 1001 which similarly prohibits false statements to obtain a benefit."

The nature and elements of theft by deception under N.J. Stat. Ann. § 2C:20-4 are not substantially similar to obstruction of justice under 18 U.S.C.A. § 1001. Although both statutes include references to falsification of information, their elements are not otherwise similar. Theft by deception requires theft, through "purposely obtain[ing] property of another by deception," while obstruction of justice

does not involve the element of theft. Conversely, obstruction of justice involves falsification or concealment of a fact, statement, or document in relation to a matter within the jurisdiction of the executive, legislative, or judicial branch of the U.S. government; theft by deception does not.

Similarly, the nature and elements of unauthorized practice of law under N.J. Stat. Ann. § 2C:21-22(b)(1) are not substantially similar to obstruction of justice under 18 U.S.C.A. § 1001. Obstruction of justice does not involve engaging in unauthorized practice of law or perpetuating a false impression that the perpetrator is licensed to practice law. Although both statutes mention falsification of information, their elements are not similar.

The petitioner also asserts in her appeal brief that the other crimes mentioned in the police reports and conviction records, but not listed on the Form I-918 Supplement B, were substantially similar to obstruction of justice because all include fraud or misrepresentation. The additional crimes that were investigated or prosecuted include conspiracy to transfer and/or possess fraudulent government documents in violation of N.J. Stat. Ann. §§ 2C:5-1 and 2C:21-2.1; unlawful practice of immigration law in violation of N.J. Stat. Ann. § 2C:21-31(b)(1)-(3); and possession of false documents in violation of N.J. Stat. Ann. § 2C:21-2.1. However, the petitioner has not provided a statutory analysis to demonstrate the substantial similarities between the nature and elements of any of these crimes and obstruction of justice. Furthermore, the evidence does not demonstrate that the petitioner was a victim of these crimes. The Form I-918 Supplement B does not indicate that the crimes were investigated or prosecuted in relation to the petitioner. The petitioner submitted copies of police reports relating to the investigation against M-A-, but those police reports list other individuals as victims and do not mention the petitioner.

Here, the record does not demonstrate that the nature and elements of the crimes of theft by deception under N.J. Stat. Ann. § 2C:20-4, unauthorized practice of law under N.J. Stat. Ann. § 2C:21-22(b)(1), or any other crime of which the petitioner was a victim are substantially similar to obstruction of justice or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner has not demonstrated that she is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, the petitioner cannot satisfy any of the criteria for nonimmigrant classification at section 101(a)(15)(U)(i)(I)-(IV) of the Act, and we will not reach the issues of whether the petitioner suffered substantial physical or mental abuse as a result of the crime, possesses information about the crime, was helpful to law enforcement in the investigation or prosecution, or was the victim of criminal activity that occurred in the United States or in violation of U.S. law.

Conclusion

The petitioner has not established that she was the victim of a qualifying crime or criminal activity. Therefore, she has not demonstrated that she can satisfy any of the criteria for nonimmigrant classification at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

As in all visa petition proceedings, the petitioner bears the burden of proving 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.