



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-K-S-

DATE: DEC. 7, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The Petitioner subsequently filed two motions to reopen and reconsider which the Director denied. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

An alien may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

(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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria).

Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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[.]¹

“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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 or more of those offenses, if:

(A) The petitioner has been directly and 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 burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification. 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).

¹ 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.

Matter of V-K-S-

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of India who last entered the United States on October 3, 2002, as an H-1B nonimmigrant. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on December 7, 2012. On October 22, 2013, the Director issued a request for evidence (RFE) that, among other things, the Petitioner was the victim of a qualifying crime. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the petition finding that the Petitioner was not the victim of qualifying criminal activity and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The Petitioner filed two motions to reopen and reconsider before the Director which the Director denied. On appeal, the Petitioner submits a brief and additional evidence and asserts that the crime of which he was a victim, visa fraud, is substantially similar to statutorily identified crimes of obstruction of justice, witness tampering, and perjury.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

A. Certified Criminal Activity

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification, that was signed by [REDACTED] (certifying official), U.S. Attorney for the Southern District of Ohio, on November 26, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as other: visa fraud. In Part 3.3, the certifying official referred to 18 U.S.C. § 1546, fraud and misuse of visas, permits, and other documents, as the criminal activity that was investigated or prosecuted. The court documents list the offense of which the perpetrator was convicted as fraud and misuse of visas, permits, and other documents under 18 U.S.C. § 1546(a).

B. Fraud and Misuse of Visas is not Qualifying Criminal Activity

The Form I-918 Supplement B and court documents indicate that visa fraud was investigated. The crime of fraud or misuse of visas, permits, and other documents 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 fraud and misuse of visas offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

On appeal, the Petitioner contends that fraud and misuse of visa, permits, and other documents under 18 U.S.C. § 1546(a) is similar to the qualifying crimes of perjury, obstruction of justice, and witness tampering.

Under 18 U.S.C. § 1546, fraud and misuse of visas, permits, and other documents:

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact--

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined

in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

18 U.S.C. § 1546(a) (West 2015).

Under 18 U.S.C. § 1621, perjury occurs when:

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true[.]

18 U.S.C. § 1621 (West 2015).

The elements of 18 U.S.C. § 1546(a) are not substantially similar to perjury under 18 U.S.C. § 1621. Perjury involves providing false testimony under oath, or providing information under penalty of perjury when the provider willfully subscribes as true something that he does not believe to be true. Although one section of 18 U.S.C. § 1546(a) involves making an oath under penalty of perjury under 28 U.S.C. § 1746, it contains the added elements of making, using, possessing, or selling false identification documents or making false statements to evade immigration laws or regulations. Furthermore, perjury under 18 U.S.C. § 1621 requires taking an oath before a tribunal, officer or person, or providing a declaration under penalty of perjury and willfully subscribing a material matter which the individual does not believe to be true. Visa fraud under 18 U.S.C. § 1546(a) does not require any such oath or declaration.

Under 18 U.S.C. § 1505, obstruction of proceedings before departments, agencies, and committees occurs when:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before

any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . .

18 U.S.C. § 1505 (West 2015).

The elements of 18 U.S.C. § 1546(a) are not substantially similar to obstruction of justice under 18 U.S.C. § 1505. Obstruction of justice involves misrepresenting information or using threats or force to impede or obstruct a pending proceeding before a U.S. department, agency or committee. 18 U.S.C. § 1546(a) does not involve the use of threats or force – essential elements in the federal obstruction of justice statute.

Under 18 U.S.C. § 1512, witness tampering involves:

(a) (1) Whoever kills or attempts to kill another person, with intent to--

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to--

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to--

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).

....

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to--

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[,] supervised release[,] parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation[,] supervised release[,] parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding; or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

....

No elements of 18 U.S.C. § 1546(a) are similar to witness tampering under 18 U.S.C. § 1512. Witness tampering involves killing or threatening to kill, using or threatening the use of physical force, or intimidating, threatening or harassing someone to prevent their involvement in a legal proceeding. Visa fraud under 18 U.S.C. § 1546(a) does not include any element of killing, force, threats, or harassment in order to prevent someone from testifying or causing them to withhold or destroy an object from an official proceeding.

On appeal, the Petitioner asserts that because each of the qualifying crimes and visa fraud all contain the same necessary level of scienter and relate to the manipulation of documents or persons pursuant to the official activities of the United States, they are substantially similar. However, as explained above, each of the qualifying crimes has substantially different or additional elements which are not contained in 18 U.S.C. § 1546(a), which is thus not “substantially similar” in nature and elements to any of the qualifying crimes.

The only crime certified at Part 3.3 of the Form I-918 Supplement B was fraud and misuse of visas, permits, and other documents under 18 U.S.C. § 1546(a), and the other evidence in the record, including the letter from the certifying official and the record of conviction, supports that conclusion.

There is no evidence that the certifying agency investigated perjury, obstruction of justice, or witness tampering against the Petitioner.² We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that a qualifying criminal activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that the crimes of perjury, obstruction of justice, or witness tampering were investigated or prosecuted.

Furthermore, to establish that he was the victim of the qualifying crime of perjury, obstruction of justice, or witness tampering in these proceedings, the Petitioner must demonstrate that the perpetrator committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his 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). The Petitioner did not provide any argument or legal analysis to show how this requirement has been met. Regardless, the evidence does not demonstrate that the perpetrator committed any qualifying crime to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or that he committed a perjury, obstruction of justice, or witness tampering offense to further abuse, exploit or exert undue control over the Petitioner through the manipulation of the legal system. Accordingly, the Petitioner has not demonstrated that the perpetrator's visa fraud offense was accomplished, in principal part, as a means to further the exploitation, abuse or undue control over the Petitioner by the perpetrator's manipulation of the legal system.

The Petitioner has not established that the nature and elements of 18 U.S.C. § 1546(a) (fraud or misuse of visas, permits, and other documents) are substantially similar to the qualifying crimes of perjury, obstruction of justice, witness tampering, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act, and there is no evidence in the record that any qualifying crime was actually detected or investigated at the time the crime was reported or thereafter. The Petitioner has not, therefore, established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not 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.

² 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).

D. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

E. 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 also did not 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.

F. Jurisdiction

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not 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.

IV. CONCLUSION

The Petitioner has not demonstrated that he is a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i)(I) and (iii) of the Act. He, therefore, also does not meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(II)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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.

ORDER: The appeal is dismissed.

Cite as *Matter of V-K-S-*, ID# 14733 (AAO Dec. 7, 2015)