



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

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

MATTER OF I-R-G-

DATE: DEC. 22, 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 matter is now before us on appeal. The appeal will be dismissed.

I. 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;

Extortion is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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.” 8 C.F.R. § 214.14(a)(9).

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.

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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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in August 2008 without inspection. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on November 1, 2013. On September 12, 2014, the Director issued a request for evidence (RFE) to obtain evidence that the crime listed on the Form I-918 Supplement B was qualifying criminal activity and that the Petitioner suffered substantial physical and emotional harm as a victim of such activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish her eligibility.

The Director denied the Form I-918 because the Petitioner did not establish that she was the victim of qualifying criminal activity and she suffered substantial abuse as a result of qualifying criminal activity. The Petitioner filed a timely appeal. On appeal, the Petitioner submits a brief and additional evidence.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we affirm the Director's decision. The appeal will be dismissed for the following reasons.

A. Qualifying Criminal Activity

The Petitioner submitted a Form I-918 Supplement B signed by Sergeant (Sgt.) [REDACTED] Sheriff's Office, [REDACTED] Idaho, (certifying official), on May 2, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 of Form I-918 Supplement B as extortion and provided at Part 3.2 the dates of the criminal activity as "2007-2009." In Part 3.3, the certifying official referred to Idaho Code § 18-2403(2)(b) (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

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extortion by a notary, C-P-.¹ C-P- told [the Petitioner] that she was an immigration attorney, and stole approximately \$11,500 from her saying this money was for immigration-related fees.”

We review the Form I-918 and accompanying documents to determine the criminal activity investigated or prosecuted. In the instant proceeding, the certifying official’s indication on the Form I-918 Supplement B that the Petitioner was the victim of extortion is without support in the supplemental materials in the record.² The record contains a [REDACTED] Sheriff’s Incident Detail, dated August 13, 2009, reflecting that the crime of fraud was investigated, and describes the incident as “defrauding illegal aliens.” The record reflects that the Idaho Attorney General filed a civil proceeding against C-P- in 2010 to obtain restitution for the victims of the fraudulent scheme. The record also shows that on [REDACTED] 2013, C-P- was indicted for mail fraud under 18 U.S.C. § 1341. The indictment identifies the duration of the scheme to defraud the unnamed victims as January 1, 2012, until July 31, 2013, which is outside the duration of the criminal activity identified on the Form I-918 Supplement B.

The certifying official referred to Idaho Code § 18-2403(2)(b), theft, as the criminal activity that was investigated or prosecuted, which is defined, in pertinent part, under Idaho law as “a wrongful taking, obtaining or withholding of another’s property . . . [b]y conduct heretofore defined or known as larceny; common law larceny by trick; embezzlement; extortion; obtaining property, money or labor under false pretenses; or receiving stolen goods” Idaho law further defines obtaining property by false promise when “pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he . . . will in the future engage in particular conduct, and when he does not intend to engage in such conduct” Idaho Code Ann. § 18-2403(2)(d) (West 2009). In contrast, theft by extortion is defined under Idaho law as “[a] person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear” of some type of harm. Idaho Code Ann. § 18-2403(2)(e) (West 2009). The [REDACTED] Sheriff’s Incident Detail indicates that the Petitioner was the victim of fraud, not extortion.

On appeal, the Petitioner asserts that regardless of whether she was the victim of extortion under Idaho law, she was the victim of a similar activity to extortion. The Petitioner contends that she was a victim of extortion in that she was vulnerable to exploitation because of her illegal immigration status. 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 these offenses 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. Accordingly, the Petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of the crime investigated, fraud, are substantially similar to extortion or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act.

¹ Name withheld to protect the individual’s identity.

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).

On appeal, the Petitioner contends that in the alternative she was a victim of obstruction of justice or witness tampering, in that C-P-used dilatory tactics that kept the Petitioner from reporting the crime to the police. However, the Form I-918 Supplement B and supporting evidence do not demonstrate that either of these qualifying crimes were ever investigated or prosecuted by the certifying agency. We recognize that qualifying criminal activity may occur during the commission of a non-qualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that a qualifying crime was investigated or prosecuted. Accordingly, the petitioner has not shown that she was the victim of the qualifying crime of extortion, or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

With respect to the underlying facts of record, the Director determined that the Petitioner had not suffered substantial physical or mental abuse as a result of qualifying criminal activity. On appeal, the Petitioner asserts that she suffered emotional and physical harm because she was a victim of extortion. However, as a threshold matter, because the Petitioner has not established that she was the victim of qualifying criminal activity, she has also not established that she 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.

IV. CONCLUSION

On appeal, the Petitioner has not demonstrated that she was a victim of qualifying criminal activity. Accordingly, she has not demonstrated that she meets the remaining eligibility requirements for visa classification as a U nonimmigrant. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

The Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 I-R-G-*, ID# 14790 (AAO Dec. 22, 2015)