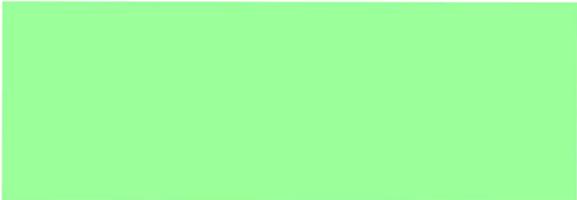


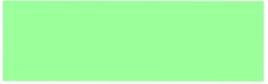
(b)(6)

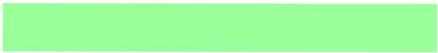
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Administrative Appeals Office (AAO)*  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



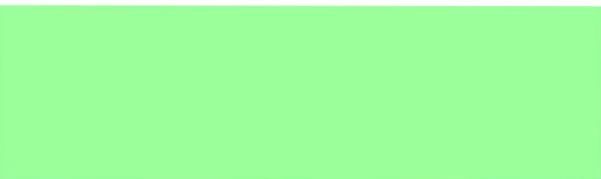
U.S. Citizenship  
and Immigration  
Services



Date: **FEB 04 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)

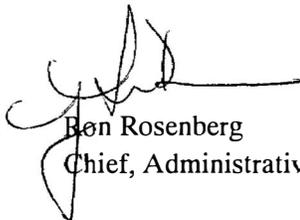
ON BEHALF OF PETITIONER:  


**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,

  
Ben 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 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 substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal activity occurred in the United States. On appeal, the petitioner submits a brief.

*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

foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

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 eligibility requirements for U nonimmigrant classification are further explained 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.

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."

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims he entered the United States on or about March of 2003, without being inspected, admitted, or paroled. 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 December 10, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On November 29, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime. 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 was a victim of fraud which is similar to extortion and obstruction of justice, qualifying crimes.

#### *Claimed Criminal Activity*

In his declaration, the petitioner recounted that after he was placed in removal proceedings, he contacted [REDACTED] to assist him with his immigration case. The petitioner stated that after he paid [REDACTED] \$2,500 to represent him, he learned that [REDACTED] was either suspended or disbarred from the practice of law. According to the petitioner, he missed his court hearing because of [REDACTED] and now he worries a lot, struggles with stress, and does not want to eat or sleep.

The Form I-918 Supplement B that the petitioner submitted was signed by Judge [REDACTED] General Session Court Division, Davidson County, Tennessee (certifying official) on July 6, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "other: fraud." In Part 3.3, the certifying official referred to "Intentional Misrepresentation; Unfair or Deceptive Act (TCA 47-18-104)" as the criminal activity that was investigated or prosecuted. At Parts 3.5 and 4.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner "was a victim of fraud by former attorney [REDACTED] (Now disbarred) . . . [and] appeared in civil court to testify about the fraud and civil damages he has incurred. . . ."

*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 denying the petitioner's Form I-918 U petition.

Unfair or Deceptive Acts or Practices Under Tennessee Law is not Qualifying Criminal Activity

The Form I-918 Supplement B indicates that the crime investigated or prosecuted was Tennessee Code § 47-18-104, unfair or deceptive acts or practices. This crime is not specifically listed as a qualifying crime under 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 unfair or deceptive acts or practices 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 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 unfair or deceptive acts or practices is substantially similar to the qualifying crimes of extortion and obstruction of justice. Section 47-18-104 of the Tennessee Code prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce" and lists fifty such acts or practices. TENN. CODE ANN. § 47-18-104. Under Tennessee law, "[a] person commits extortion who uses coercion upon another person with the intent to: (1) Obtain property, services, any advantage or immunity; (2) Restrict unlawfully another's freedom of action; or (3)(A) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity. . . ." TENN. CODE ANN. § 39-14-112. Obstruction of justice is addressed in Title 39, Chapter 16, Part 6 of the Tennessee Code. The petitioner contends on appeal that obstruction of justice is a broad category of conduct includes resisting or evading arrest, obstruction of service of a legal writ or process, compounding a crime, escape from a penal institution, and failure to appear in court when required.

No elements of unfair or deceptive acts or practices under § 47-18-104 of the Tennessee Code are similar to either extortion under § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6. The petitioner has not specified which of the fifty unfair or deceptive acts or practices listed in § 47-18-104 is substantially similar to a qualifying crime. Rather, the petitioner claims on appeal that this case of "notario fraud" implicates extortion and obstruction of justice, and that the spirit of the U nonimmigrant status is to protect vulnerable immigrant communities from crimes such as notario fraud. While the record shows the petitioner submitted an affidavit in the State's case against [REDACTED] nonetheless, the standard for inclusion as qualifying criminal activity is that the crime investigated or prosecuted is "substantially similar" to one of the enumerated crimes, and 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 crimes that were investigated and

<sup>1</sup> According to the petitioner's June 26, 2009 affidavit, [REDACTED] who the certifying official referenced in the Form I-918 Supplement B, was an employee of [REDACTED]

the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of § 47-18-104 of the Tennessee Code, unfair or deceptive acts or practices, is substantially similar to either extortion under Tennessee Code § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6 of the Tennessee Code. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the only crime certified at Part 3.3 of the Form I-918 Supplement B was unfair or deceptive acts or practices. The evidence of record does not demonstrate that the crime of extortion, obstruction of justice, or any other qualifying crime was investigated or prosecuted. 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

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to 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.

Possession of Information Concerning Qualifying Criminal Activity

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

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 the petitioner did not establish that he was the victim of qualifying criminal activity, he has 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 qualifying criminal activity; he suffered substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal

activity occurred in the United States. 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.