

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

(b)(6)



DATE: JUL 13 2015

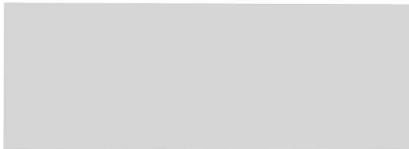
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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](http://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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 he was a victim of qualifying criminal activity and therefore also could not meet 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[.]

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 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 Mexico who claims to have last entered the United States on March 25, 2010 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on July 1, 2013. The director issued a request for evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that he suffered substantial physical or mental abuse as a result. 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 criminal activity and therefore that the petitioner also could not establish eligibility for the remaining statutory requirements under section 101(a)(15)(U)(i) of the Act. 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 16, 2013, by [REDACTED], Sheriff, [REDACTED] Sheriff's Office, [REDACTED] Idaho (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity that was investigated or prosecuted as “Other: Immigration Fraud.” At Part 3.3, he cited Idaho Code Ann. § 18-2403(2)(d), theft by false promise, and Idaho Code Ann. § 18-2407(1), grand theft, as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. The certifying official states at Part 3.5 that the perpetrator “took money with promise to help with immigration documents and never did any work.”

#### *Analysis*

We conduct appellate review on a *de novo* basis. 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 his brief on appeal, the petitioner asserts that the director erred in denying his petition based on a finding that he was not a victim of the crime of extortion. He alleges that although he was not the victim of actual extortion, the crimes of which he was a victim – theft by false promise and grand theft – are substantially similar to extortion. The petitioner also contends that USCIS erred in finding that he had not suffered substantial physical or mental abuse, and had instead only suffered financial loss, as a result of the crimes of which he was a victim. He asserts that he has submitted sufficient evidence that he suffered substantial abuse as required by section 101(a)(15)(U)(i)(I) of the Act.

The crimes of theft by false promise and grand theft 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 false promise or grand theft 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.

Idaho law provides, in pertinent part, the following regarding the crime of theft:

(1) A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Theft includes a wrongful taking, obtaining or withholding of another’s property, with the intent prescribed in subsection (1) of this section, committed in any of the following ways:

\* \* \*

(d) By false promise:

1. A person obtains 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 or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

\* \* \*

(e) By extortion. 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 that, if the property is not so delivered, the actor or another will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime; or
4. Accuse some person of a crime or cause criminal charges to be instituted against him; or
5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Idaho Code Ann. § 18-2403 (West 2015).

Idaho law also provides the following regarding grand theft:

(1) Grand theft.

(a) A person is guilty of grand theft when he commits a theft as defined in this chapter and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(b) A person is guilty of grand theft when he commits a theft as defined in this chapter and when:

1. The value of the property taken exceeds one thousand dollars (\$1,000); or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a check, draft or order for the payment of money upon any bank, or a check, draft or order account number, or a financial transaction card or financial transaction card account number as those terms are defined in section 18-3122, Idaho Code; or
4. The property, regardless of its nature or value, is taken from the person of another; or
5. The property, regardless of its nature and value, is obtained by extortion; or
6. The property consists of one (1) or more firearms, rifles or shotguns; or
7. The property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars (\$150) in value.
8. When any series of thefts, comprised of individual thefts having a value of one thousand dollars (\$1,000) or less, are part of a common scheme or plan, the thefts may be aggregated in one (1) count and the sum of the value of all of the thefts shall be the value considered in determining whether the value exceeds one thousand dollars (\$1,000); or
9. The property has an aggregate value over fifty dollars (\$50.00) and is stolen during three (3) or more incidents of theft during a criminal episode. For purposes of this subparagraph a "criminal episode" shall mean a series of unlawful acts committed over a period of up to three (3) days; or
10. The property is anhydrous ammonia.

Idaho Code Ann. § 18-2407(1).

The petitioner asserts that theft by false promise is substantially similar to extortion under Idaho law because two out of three main elements in each crime are the same. He explains that both involve theft, which "includes a wrongful taking, obtaining or withholding of another's property" with "intent to deprive another of property or to appropriate the same to [one]self or to a third person." He contends that the two crimes only differ by "the means of how the theft is carried out. However, this does not diminish the substantial similarity of the elements in that two out of the three elements for each crime are identical." Additionally, the petitioner argues that the perpetrator of the crime against him "achieved Theft by Promise [sic] through fear. While not creating or instilling fear as required for extortion, the perpetrator exploited [the petitioner's] already existing fear of being deported and separated from his family." Furthermore, the petitioner states that the perpetrator "was

a de facto public servant at the time of the crime” because she claimed to be an immigration attorney.<sup>1</sup>

The nature and elements of theft by false promise under Idaho Code Ann. § 18-2403(2)(d) are not substantially similar to extortion under Idaho Code Ann. § 18-2403(2)(e). The petitioner is correct that both crimes are a type of theft, and, therefore, both involve a wrongful taking of another’s property with the intent to deprive that person of the property. However, the means by which each type of theft is achieved is a significant difference between the two crimes, and they cannot be considered substantially similar when those elements differ. Theft by false promise requires obtaining the property of another by falsely representing that certain conduct will be performed. By contrast, extortion requires inducing another person to deliver property by causing that person to fear that a harmful result will occur if he does not deliver the property. Because theft by false promise does not include the element of inducing an action through the use of fear, it is not substantially similar to extortion.

The petitioner also contends that grand theft is substantially similar to extortion. In his appeal brief, he states that subsections (a) and (b) of Idaho Code Ann. § 18-2407(1) both “contain language that refers to grand theft as theft by extortion.” He alleges that because the certifying official did not specify which subsection was investigated or prosecuted, this suggests that both were investigated. He also cites the U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007) (Interim Rule), in noting that “qualifying criminal activity may occur in the course of the commission of a non-qualifying crime.”

The evidence does not demonstrate that the nature and elements of grand theft under Idaho Code Ann. § 18-2407(1), as investigated or prosecuted in the crime against the petitioner, are substantially similar to extortion. One subsection of the statute, Idaho Code Ann. § 18-2407(1)(a), is substantially similar to extortion in Idaho Code Ann. § 18-2403(2)(e) because all elements in Idaho Code Ann. § 18-2407(1)(a) also appear in Idaho Code Ann. § 18-2403(2)(e). However, Idaho Code Ann. § 18-2407(1) is broad, and there is no indication in the record that subsection (a) was investigated or prosecuted in relation to the crime against the petitioner.<sup>2</sup> Contrary to the petitioner’s assertion, we cannot assume that a

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<sup>1</sup> The petitioner appears to argue that the perpetrator’s false claim that she was an immigration attorney made her a public servant and, therefore, satisfied Idaho Code Ann. § 18-2403(2)(e)(8) in that she committed extortion by threatening to use or abuse her public position if the petitioner did not pay her. However, even if the perpetrator’s status as a public servant alone could satisfy that element, which we need not decide here, there is no support for the assertion that a private attorney is a public servant. Although Idaho Code Ann. § 18-2403 does not provide a definition of “public servant,” a definition appears in Idaho Code Ann. § 18-1351(8) regarding bribery and corrupt practices. It states, “‘Public servant’ means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function . . . .” There is no evidence in the record that the perpetrator was, or claimed to be, a government employee or person performing a governmental function.

<sup>2</sup> In his appeal brief, the petitioner emphasizes the portion of Idaho Code Ann. § 18-2407(1)(a) relating to abuse of the perpetrator’s public position. As noted above, there is no evidence that this portion is relevant to the petitioner’s case, as the perpetrator of the crime against him was a private actor and held herself out as a private attorney. She was not a public servant as that term is defined in Idaho Code Ann. § 18-1351(8).

particular subsection was investigated when the certifying official cited the entire section rather than specifying a particular subsection. Although the petitioner correctly notes that subsection (b) contains one element relating to extortion at Idaho Code Ann. § 18-2407(1)(b)(5), the remaining nine elements of subsection (b) do not relate to extortion. Therefore, the nature and elements of the two crimes are not substantially similar.

Furthermore, although the petitioner asserts in his appeal brief that the crimes against him were substantially similar to extortion because the perpetrator exploited the petitioner's fear of being deported, 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 crime that was investigated with a qualifying crime. See 8 C.F.R. § 214.14(a)(9).

We recognize that the Interim Rule provides that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. However, the certifying official must still indicate that the qualifying criminal activity has been investigated or prosecuted. Sections 101(a)(15)(U)(iii) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(iii), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record does not demonstrate that the nature and elements of the crimes of theft by false promise and grand theft investigated in this case, Idaho Code Ann. §§ 18-2403(2)(d) and 18-2407(1), are substantially similar to extortion under Idaho Code Ann. § 18-2403(2)(e) or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner has not demonstrated that he is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. As a result, he cannot demonstrate that he meets any of the remaining eligibility criteria at 101(a)(15)(U)(i)(II)-(IV) of the Act.

### *Conclusion*

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he also cannot show that satisfies any of the criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. Therefore, the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act.

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