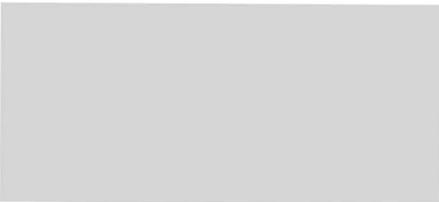




U.S. Citizenship
and Immigration
Services

(b)(6)



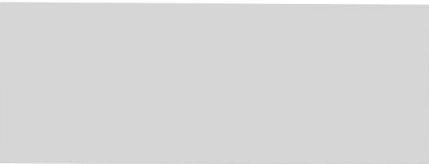
Date: **JUN 16 2015**

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:

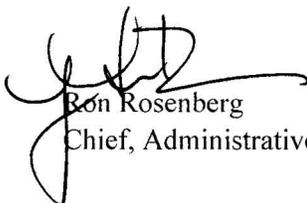


INSTRUCTIONS:

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,


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 petition because the petitioner did not establish that he suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity and consequently was ineligible for U classification. 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[.]

The regulation governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in pertinent

part:

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(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.

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. . . .

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 was paroled into the United States on December 27, 1999 for humanitarian reasons. 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 26, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. The director subsequently issued a Request for Evidence (RFE) for the petitioner to establish, among other things, that he was the direct or indirect victim of qualifying criminal activity and that he suffered substantial abuse as the result of the certified criminal activity. 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 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 the victim of extortion and suffered resultant mental abuse.

Claimed Criminal Activity

In his original declaration, the petitioner recounted that on July 6, 2006, he arrived at his automobile repair shop with two other workers as usual. In order to complete the repair job waiting, the petitioner went to purchase parts at a nearby store. Before he could return to his shop, he received a telephone call from one of his workers telling him that armed men had come to the shop, asked for the petitioner, fired shots in the air, and abducted the workers. The worker reported that he jumped out of the kidnappers' vehicle at a stop sign and ran away, but sustained a gunshot wound to the leg during the escape. The petitioner stated that he returned to the shop, but when he saw it full of police, he kept driving to a friend's store. The petitioner stated that he received ransom calls for the other kidnapped worker; he responded that he did not have the funds requested. The petitioner reported the calls to the police and re-located out of his home, fearing the kidnappers would subsequently target his family. In a subsequent declaration, the petitioner stated that the kidnapped man was set free hours later and walked barefoot and injured to a mutual friend's home. The released man gave the petitioner a message from the kidnappers that they would seek retribution by killing the petitioner and his family for talking to the police.

In a declaration submitted in response to the director's RFE, the petitioner stated that on Thanksgiving 2005, his younger brother and cousin were kidnapped and held hostage. The petitioner stated that the kidnappers made ransom calls to his family in Mexico and the men were returned after the ransom was paid. The petitioner stated that his cousin was subsequently murdered in Mexico in 2010 and two additional cousins were murdered in Mexico in 2008 and 2009. The petitioner stated that he was unsure whether the kidnapping and other violent events involving his extended family were connected.

The Form I-918 Supplement B that the petitioner submitted was signed by Assistant Police Chief [REDACTED] of the [REDACTED] Arizona Police Department (certifying official) on June 30, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as extortion and kidnapping. In Part 3.3, the certifying official listed Arizona Revised Statute sections 13-1304, 13-804, and 13-1903/1904 (kidnapping, extortion, aggravated/armed robbery, respectively) as the statutory citations for 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:

[w]as the target of a kidnapping raid . . . Because [the petitioner] was not present at the time of the raid, the kidnappers forcibly took other men who were present, and later shot. [sic] However, the kidnappers then began calling [the petitioner] on his cell phone and demanding ransom in return for the victims.

At Part 3.6, which asks the certifying official to describe any injury to the victim, he stated that there was no physical injury to the petitioner, but that one of the men was shot in the leg. The certifying official further stated: “[i]t is not uncommon for victims in this type of scenario to not suffer any physical injury, yet suffer mentally from fear and guilt. [The certifying official] cannot attest to [the petitioner’s] mental harm, he will have to provide that information himself.”

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director’s determination that the petitioner was not the victim of qualifying criminal activity, but affirm the finding that the petitioner did not suffer resultant substantial physical or mental abuse.

Victim of Qualifying Criminal Activity

The director determined that although kidnapping and armed robbery were investigated, the petitioner was not present for those criminal activities and, therefore, those crimes could not be considered qualifying. The director also found that there was insufficient evidence in the record to demonstrate that the petitioner was the victim of extortion. On appeal, the petitioner states that he has never claimed to be the victim of kidnapping or armed robbery, but that he was the victim of extortion as defined both under federal and Arizona law.

The Form I-918 Supplement B cited Arizona Revised Statute (ARS) section 13-1804, Theft by extortion, as the crime the certifying agency investigated or prosecuted. ARS § 13-804 states, in pertinent part:

(A) A person commits theft by extortion by knowingly obtaining or seeking to obtain property or services by means of a threat to do in the future any of the following:

- (1) Cause physical injury to anyone by means of a deadly weapon or dangerous instrument or cause death or serious physical injury to anyone.
- (2) Cause physical injury to anyone except as provided in paragraph 1 of this subsection.

* * *

(C) Theft by extortion as described in subsection A, paragraph 1 is a class 2 felony. Otherwise, theft by extortion is a class 4 felony.

ARIZ. REV. STAT. § 13-804 (2014 West). The Form I-918 Supplement B and other evidence establish that an extortion crime was committed against the petitioner, and that the certifying agency detected and investigated this crime. Accordingly, the petitioner was a victim of qualifying criminal activity, and we withdraw that portion of the director’s decision finding otherwise.

Substantial Physical or Mental Abuse

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, the certifying official indicated that the petitioner suffered no physical injury and that many victims of such criminal activity suffer from fear and guilt, but that he was unaware whether the petitioner mentally suffered. In his declaration, the petitioner states that as a result of the threats, his family was forced to relocate from their home as a result of the threats that were made by the kidnappers. The petitioner stated that his wife's employer allowed the family to stay in their home for two weeks and later bought another home that the family stayed in for two years. He states that after the kidnapping incident, his family has protected themselves from anyone who got close and that his children do not feel secure in their own house. In response to the director's RFE, the petitioner submitted a second declaration detailing another kidnapping and several murders to which his extended family members have been subjected. He also detailed how his wife and children remain on edge about strangers and have become situationally hyperaware.

The petitioner also submitted letters from [REDACTED] the employers of the petitioner's wife who provided shelter for the family after the kidnapping incident. Mr. [REDACTED] states in his April 11, 2014 letter that he has noticed a change in each member of the petitioner's family, stating about the petitioner that he is "very wary of anything unusual anywhere around [him]." The [REDACTED] state that the petitioner and his family are "extremely cautious in what they do" and that the petitioner closed his business as a result of the criminal activity.

On appeal, the petitioner states that he was forced to flee his home for two years and remains concerned for his safety. He also states that his family, especially his son, has particularly suffered from mental anguish as a result of the threat to the family's safety. He notes that three of his extended family members have been murdered and he is concerned that the kidnapping attempt may fall into a larger scheme or plot against the family.

The preponderance of the relevant evidence in this case does not show that the petitioner suffered substantial physical or mental abuse as the result of his victimization under the factors and standard outlined in the regulation at 8 C.F.R. § 214.14(b)(1). The petitioner's declarations discuss in general terms his fear of new situations and unfamiliar people, but they fail to probatively describe any serious harm to his health or mental soundness resulting from the extortion. Much of the evidence describes, also in the general terms, the effects of the 2006 incident and the deaths of the petitioner's extended family members on the petitioner's wife and children, with little description of the impact of the criminal activity to which the petitioner was subjected on his own mental or physical health. We are sympathetic to the petitioner's loss of several relatives due to criminal acts of violence; however, we cannot conclude based on the evidence before us that he suffered substantial abuse resulting from the 2006 incident of extortion investigated by the certifying agency. Consequently, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial abuse resulting from qualifying criminal activity.

Conclusion

The petitioner has established that he was the victim of a qualifying crime, namely extortion. As a result, that portion of the director's decision is withdrawn. The petitioner remains ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), however, as the record does not establish that he suffered resultant substantial physical or mental abuse as required under subsection 101(a)(15)(U)(i)(I) of the Act.

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.