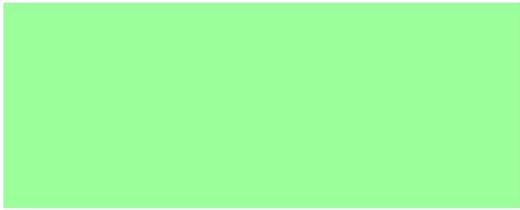


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

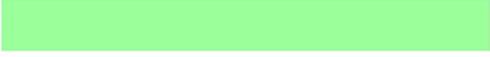


U.S. Citizenship  
and Immigration  
Services

(b)(6)

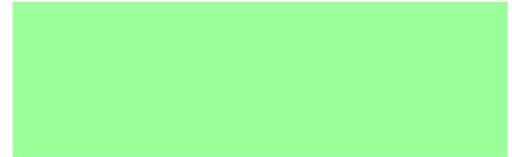


Date: **MAR 11 2015** Office: VERMONT SERVICE CENTER FILE: 

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:

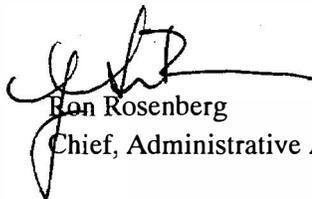


INSTRUCTIONS:

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,



Ron 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 and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. 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

foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

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

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.

<sup>1</sup> 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.

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 Ecuador who claims to have last entered the United States on April 24, 2003, on a B-2 nonimmigrant visa. 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 February 27, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On January 22, 2014, 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 asserts that he is the victim of coercion, which is substantially similar to the crime of extortion.

### *Claimed Criminal Activity*

In his statement, the petitioner recounted that on June [REDACTED] at around 10:30 p.m. he received a phone call from an unknown individual who asked him if he was the pastor of the church "[REDACTED]" which he responded that he was. The caller then asked the petitioner to give him money from the church or else the petitioner would "see what will happen to [him] and [his] church." The petitioner told the caller that he does not have money to give him. The caller then shouted at the petitioner, insulted him and threatened him. The next day, the driver of the church van reported to the pastor that the church van was vandalized the night before. The petitioner claimed that he asked the driver of the church van to call and report the incident to the police before he arrived at the scene. The petitioner indicated that he has received calls from the same individual after the church van was vandalized.

The Form I-918 Supplement B that the petitioner submitted was signed by Captain [REDACTED] Minnesota, Police Department, (certifying official), on November 10, 2012. Captain [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as extortion. At Part 3.3, Captain [REDACTED] referred to Minnesota Statutes (M.S.A.) § 609.595, damage to motor vehicle, as the criminal

activity that was investigated or prosecuted. He also stated “extortion” at part 3.3 but failed to provide an accompanying statutory citation. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official reiterated the description of events as provided by the petitioner in his statement. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner has suffered from emotional stress and he is afraid for his safety.

The case report from the Minneapolis Police Department indicates that the crime investigated was damage to motor vehicle under M.S.A. § 609.595. A supplement to the report authored by Officer [REDACTED] of the [REDACTED] MN Police Department indicates that on April 18, 2012, he received a call from the petitioner’s attorney informing him that the petitioner had been a victim of crime and that the petitioner failed to report the crime to the police when it happened. Officer [REDACTED] states that he interviewed the petitioner regarding the alleged crime on April 19, 2012 and April 20, 2012. When asked why he did not report the phone call to the police, the petitioner stated that he did not think it was important, that he was scared and confused and did not know what to do. The petitioner further stated that his attorney advised him to file a report about possible extortion.

In response to the RFE the petitioner submitted a letter signed by Commander [REDACTED] Minnesota, Police Department, on March 5, 2014. Commander [REDACTED] states that the certifying official, Captain [REDACTED] concluded that the applicant was a victim of extortion, as indicated on the Form I-918 Supplement B, and that the information provided to the police in April 2012 “may fall within the Minnesota Statute prohibiting coercion.” Commander [REDACTED] however, declared that no secondary investigation was conducted of the additional information gathered by Officer [REDACTED] due to “significant time delay between the original incident and the addition of the coercion related information.”

*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 to deny the petitioner’s Form I-918 U petition.

Victim of Qualifying Criminal Activity

The case report from [REDACTED] Police Department and the Form I-918 Supplement B indicate that the crime of damage to property under M.S.A. § 609.595 was investigated. Under Minnesota law: “Whosoever intentionally causes damage to the physical property of another without the latter’s consent is guilty of the crime of damage to property.” M.S.A. § 609.595 (West 2014). The crime of damage to property 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 crimes investigated 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. Here, the petitioner does not provide the requisite statutory analysis to demonstrate that the nature and elements of M.S.A. § 609.595 are

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substantially similar to any qualifying crime listed at 101(a)(15)(U)(iii) of the Act, including to crime of extortion.

Although the certifying official listed extortion on the Form I-918 Supplement B as the criminal activity of which the petitioner was a victim, there is evidence to support a claim that the certifying agency investigated or prosecuted such crime.

First, the record clearly shows that when the vandalism crime was reported in 2011, the petitioner did not mention, and the certifying official did not detect, the presence of a real or attempted extortion crime. Only until the petitioner's attorney called the police department more than 10 months later to assert that the petitioner was the victim of extortion did Officer [REDACTED] interview the petitioner about the petitioner's attorney's extortion allegations. It is also clear from Officer [REDACTED] report that he merely interviewed the petitioner about the alleged events and did not take any actions to investigate the claim, or make any conclusions based solely on the petitioner's testimony that a real or attempted act of extortion had occurred.

Second, Commander [REDACTED] letter, in which she stated that the incident reported by the petitioner to Officer [REDACTED] 10 months after the original vandalism investigation "suggest[s] the incident may fall within the Minnesota Statute prohibiting extortion" also demonstrates that the certifying agency did not detect or investigate a crime of real or attempted extortion. Commander [REDACTED] explicitly stated in her letter that at no time did the Police Department investigate the extortion claim because of the significant delay between the original vandalism crime that occurred in 2011 and the report made by the petitioner in 2012 of an attempted extortion. Commander [REDACTED] merely speculates that a crime of extortion may have occurred (she "suggest[s] that the incident "may" fall within a particular section of the Minnesota Statute.) and her letter is not evidence that a real or attempted extortion was detected or investigated by the certifying agency.

We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B and all credible evidence relevant to the petition will be considered. See Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). Although parts 3.1 and 3.3 of the Form I-918 Supplement B indicate that the petitioner was the victim of extortion, our review of the Form I-918 Supplement, the police reports, and the letter from Commander [REDACTED] does not lead us to conclude that the certifying agency investigated a crime of real or attempted extortion either at the time of the act of vandalism in 2011 or in 2012 when the petitioner actually reported the alleged extortion attempt. Accordingly, the petitioner has failed to establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

### *Conclusion*

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.