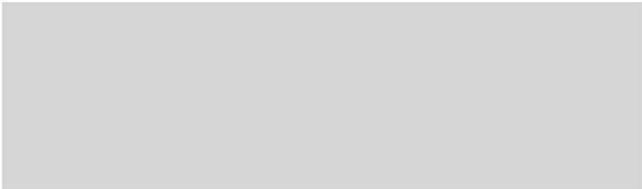




U.S. Citizenship
and Immigration
Services

(b)(6)



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DATE:

FILE #:

PETITION RECEIPT #:

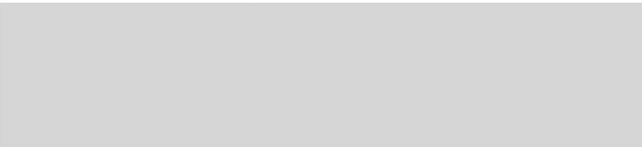
IN RE:

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:



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 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 petition because the petitioner did not establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, the petitioner submits a brief, additional evidence and copies of documents already included in the record.

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[.]

Blackmail and extortion are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I) of the Act, the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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.

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 to have initially entered the United States in August 1979, without inspection, admission or parole. In September 1982, the petitioner departed the

United States and reentered in October 1989, without inspection, admission or parole. The petitioner also departed the United States in 1990 and 1995, but reentered with an I-688 card. 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 April 22, 2013. On the same day, the petitioner filed an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). On October 28, 2013, the director issued two Requests for Evidence (RFE) that the petitioner was the victim of a qualifying crime, that he suffered substantial physical or mental abuse as a result of his victimization, and for evidence in support of his Form I-192 waiver application. The director also requested an updated Form I-918 Supplement B. The petitioner responded with an updated Form I-918 Supplement B and 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 timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that he is a victim of theft by extortion under Oregon law which is similar to Title 18 U.S.C. § 1951, the federal extortion statute. In addition, he states that he has suffered substantial mental abuse as a result of being a victim of qualifying criminal activity, he possesses information regarding the qualifying criminal activity, and he was helpful to law enforcement authorities in their investigation of the qualifying criminal activity.

Claimed Criminal Activity

In his declaration, the petitioner recounted that in 2010, he and his wife sought the services of [REDACTED] run by [REDACTED] and [REDACTED] to help legalize their status in the United States. During the initial consultation, the petitioner made an initial payment of \$8,500. Over several months, the petitioner paid over \$20,000 to [REDACTED] believing they were working on his immigration case. When Mr. [REDACTED] failed to appear at the immigration court for the petitioner's hearing, the petitioner called [REDACTED] to complain and was told by Mr. [REDACTED] that Mr. [REDACTED] had connections with the police. The petitioner was afraid that Mr. [REDACTED] would report him to the police. He later discovered that Mr. [REDACTED] and Mr. [REDACTED] had misled them regarding their immigration cases.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the RFE. The first Form I-918 Supplement B that the petitioner submitted was signed by Deputy District Attorney [REDACTED] Oregon, District Attorney's Office, on October 19, 2012. Ms. [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as blackmail and extortion. In Part 3.3, Ms. [REDACTED] referred to Oregon Revised Statutes (ORS) §§ 164.055 (theft in the first degree), 164.057 (aggravated theft in the first degree), and 164.075 (theft by extortion), as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks Ms. [REDACTED] to briefly describe the criminal activity being investigated or prosecuted, she indicated that the suspect "falsely represented himself as an Immigration Attorney and as a result extorted approximately \$20,500.00 from the [petitioner] who was seeking immigration assistance. Threats to notify law enforcement and have the [petitioner] deported kept the [petitioner] from reporting the incident. The same suspect used similar M.O. to take over \$300,000 from approximately 60 other victims. The investigation continues to grow and identify new individuals." At Part 3.6, Ms. [REDACTED] did not indicate any known or documented injury to the petitioner.

The second Form I-918 Supplement B that the petitioner submitted in response to the RFE was dated January 17, 2014, and signed by Ms. [REDACTED] (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as extortion and aggravated theft. In Part 3.3, the

certifying official refers to ORS §§ 164.055 (theft in the first degree), 164.075 (theft by extortion), and 164.085 (theft by deception), as the criminal activities that were investigated or prosecuted. At Part 3.5, the certifying official describes the same criminal activity that was in the first Form I-918 Supplement B but she adds that the suspect has taken “over \$500,000 from approximately 70 other victims.” The certifying official also explains that “the case was slow to evolve because the main suspect and co-conspirator had threatened to call law enforcement and have the victims deported.” At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

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

Both of the Forms I-918 Supplement B indicate that theft by extortion, along with other crimes, were investigated by the certifying agency. In her denial decision, the director did not fully explain why ORS § 164.075, theft by extortion, is not qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Here, the certifying official stated that the petitioner was the victim of extortion, and listed ORS § 164.075 as one of the crimes investigated or prosecuted. Under Oregon law, Ore. Rev. Stat. § 164.075 is the only statute penalizing extortion. Accordingly, the petitioner has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director’s contrary determination.¹

Substantial Physical or Mental Abuse

The petitioner has not, however, established that he suffered substantial physical or mental abuse as a result of his victimization. In his declaration, the petitioner recounted his interactions with [REDACTED] and explains that not only has he suffered economically, but also emotionally. He has lost confidence, he is depressed, and he has become antisocial. In an undated psychological evaluation, Dr. [REDACTED] a psychologist, states that as a result of the petitioner’s involvement with Immigration Solutions, the petitioner is suffering from generalized anxiety disorder. Dr. [REDACTED] indicates that the petitioner was humiliated by the money he lost to [REDACTED] he is paranoid; and “[h]is pre-existing insecurities, use of emotional defenses and world-view are permanently altered.” He recommends that the petitioner take anti-anxiety medication “until he feels more like himself.”

Factors relevant to a determination of substantial abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. See 8 C.F.R. § 214.14(b)(1). The evidence in the record does not demonstrate that the petitioner suffered substantial mental abuse as a victim of extortion. First, the certifying official does not provide any information on either law enforcement certification about known or documented injuries to the petitioner beyond the financial loss that the petitioner experienced. Second, Dr. [REDACTED] statement that the petitioner

¹ Because the petitioner has established that he was the victim of the qualifying criminal activity of extortion, we do not reach the issue of whether he was also the victim of the qualifying crime of blackmail.

“should respond to a trial of anti-anxiety medication until he feels more like himself” coupled with his diagnosis of Generalized Anxiety Disorder provide little support for a conclusion that the severity of the harm experienced by the petitioner resulted in serious harm to the petitioner’s health or mental soundness. Third and finally, the petitioner’s statement provides generalized assertions (e.g., “I am not well”) rather than specific examples of how the perpetrators’ actions impacted his mental soundness and well-being. When viewed in its totality, the evidence in the record does not support a conclusion that the petitioner suffered substantial mental abuse, as required by section 101(a)(15)(U)(i)(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.

ORDER: The appeal is dismissed. The petition remains denied.