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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 20 2015**

[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:

[Redacted]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 was the victim of qualifying criminal activity; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; or the qualifying crime occurred in the United States 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. 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;

* * *

(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 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 last entered the United States on October 17, 1997, without inspection, admission or parole.¹ 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 June 25, 2013. On February 18, 2014, the director issued a Request for Evidence (RFE) that the crimes listed on the law enforcement certification were qualifying crimes and that the petitioner suffered resultant substantial physical or mental abuse. In addition, the director also requested a copy of the petitioner's passport, his identity documents, and an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive his grounds of inadmissibility. The petitioner responded with a Form I-192 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 the police reports and his declaration show that he suffered substantial physical or mental abuse as a result of being a victim of felonious assault, attempted felonious assault, attempted murder, conspiracy to commit murder, witness tampering, attempted witness tampering, and stalking, which are qualifying criminal activities. In addition, he states that he has met all of the eligibility criteria for U classification.

Claimed Criminal Activity

In his statement dated November 17, 2012, the petitioner recounted that one day his sister-in-law and her ex-boyfriend, I-Z-,² were fighting. The petitioner called the police on I-Z-, and since that incident, friends of I-Z- have threatened the petitioner and his family. One day, when the petitioner, his wife, his daughter, and mother-in-law were having lunch at home, somebody threw a bottle of beer through the window and almost hit the petitioner's daughter. The petitioner ran outside to see who threw the bottle and when he came back in the house, he found a threatening letter near the broken bottle and discovered graffiti on the apartment wall. He called the police and when they arrived, they took the letter but said there was nothing they could do because of lack of evidence. The petitioner was also harassed on the way to work, his tires were slashed, his sister-in-law's clothes were stolen, and he received over 20 death threats over the phone. Because of the threats, the petitioner and his family moved to Colorado but his mother-in-law and sister-in-law stayed in California and continued to receive threats. About two years later, the petitioner and his family returned to California, but moved to a different neighborhood.

¹ The record shows that the petitioner claims to have initially entered the United States in 1988, without inspection, admission or parole. He departed the United States on an unknown date, and reentered on May 12, 1990, without inspection, admission or parole.

² Name withheld to protect identity.

The Form I-918 Supplement B that the petitioner submitted was signed by Detective Sergeant [REDACTED] California, Police Department (certifying official), on February 19, 2013. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as attempt to commit other; and at Part 3.3, he refers to California Penal Code (CPC) §§ 422 (making criminal threats) and 594(a)(1)(2) (vandalism), as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicates that the petitioner was a victim of “terrorist/criminal threats” and vandalism by I-Z-. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicates that the “tires on [the petitioner’s] vehicle were slashed by perpetrator, [I-Z-].”

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 Form I-918 Supplement B and incident reports from the [REDACTED] Police Department indicate that criminal threats and vandalism were investigated. These two types of crimes 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 the threats and vandalism offenses 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 claims that he is the victim of felonious assault, attempted felonious assault, and attempted murder because a beer bottle was thrown at him and “narrowly missed [his] head.” In addition, the petitioner claims that he is the victim of conspiracy and solicitation to commit murder, witness tampering, attempted witness tampering, and stalking because he received death threats from gang members.

The police reports that the petitioner submitted in support of the Form I-918 Supplement B do not mention the alleged beer bottle throwing incident described by the petitioner. Instead the police report from the certified February 9, 2001 incident provides that when the petitioner came out of his house to go to work, he noticed a ¼ full beer bottle on the sidewalk in front of his house, and then noticed the graffiti on the walls and his slashed tires. Although the petitioner indicated in his statement that the beer bottle throwing incident occurred sometime after his tires were slashed, there is no discussion of this incident by the certifying official and no evidence that the police investigated the event. Similarly, the petitioner’s statement of being called and harassed by I-Z-’s friends is not documented by the certifying official anywhere in the record. As the record presently stands, the certifying agency investigated the February 9, 2001 crime as terroristic threats and vandalism only, not as felony assault, attempted murder, stalking or witness tampering.

On appeal, the petitioner discusses how his interactions with I-Z- and I-Z-'s friends amounted to felony assault, attempted murder, witness tampering and stalking. However, the proper inquiry is not an analysis of the details underlying the criminal activity, but a statutory comparison of the nature and elements of the crimes that were investigated and the qualifying crimes.³ See 8 C.F.R. § 214.14(a)(9). Here, the petitioner does not provide a statutory analysis to demonstrate that the nature and elements of the crimes investigated (terroristic threats and vandalism) are substantially similar to the nature and elements of felony assault, attempted murder, witness tampering and stalking under California law. The petitioner's reliance on his statement to demonstrate his victimization, a statement which is without support from the certifying agency, is misplaced. As previously discussed, the record shows that the petitioner was a victim of criminal threats and vandalism by I-Z- but the certifying official did not connect the criminal threats and vandalism to the qualifying crimes of felonious assault, attempted felonious assault, attempted murder, conspiracy to commit murder, witness tampering, attempted witness tampering, or stalking, or demonstrate that these qualifying crimes were investigated by his office or another law enforcement entity. The petitioner is, therefore, not the victim of the any 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.

³ The details of the petitioner's interactions with I-Z- as described by him are not reflected in the evidence provided by the certifying agency.



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.