



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-G-M-

DATE: NOV. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification that:

(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: . . . extortion; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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.” 8 C.F.R. § 214.14(a)(9).

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;

(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.

The regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

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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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who indicates he entered the United States without inspection in March 1999. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on April 30, 2013. The Director subsequently issued two requests for evidence of, among other items, evidence that the Petitioner was the victim of qualifying criminal activity and that he suffered resultant substantial harm. The Petitioner timely responded with additional evidence which the Director found insufficient to establish eligibility and denied the Form I-918. The Petitioner timely appealed the denial of the Form I-918.

We conduct appellate review on a *de novo* basis. Based on the evidence in the record and on appeal, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

III. ANALYSIS

A. Certified Criminal Activity

The Form I-918 Supplement B was signed by [REDACTED] of the [REDACTED] Police Department (certifying official). At Part 3.1, the certifying official identified the criminal act of which the Petitioner was a victim as "Extortion" and "Fraud." He listed "Practicing Law Without a License"¹ at Part 3.3 as the criminal activity investigated or prosecuted. According to the certifying official at Part 3.5, the Petitioner was the victim of fraud by an individual claiming to be an attorney and who took money from the Petitioner in exchange for promised legal services.

B. "Practicing Law Without a License" under Washington Law is not Qualifying Criminal Activity

¹ As will be discussed, the crime identified on the Form I-918 Supplement B, "Practicing Law Without a License," is listed under Washington state law as "Unlawful Practice of Law." See Wash. Rev. Code Ann. § 2.48.180(2).

Although “Extortion” is a qualifying crime, the crime actually certified on the Form I-918 Supplement B as having been investigated or prosecuted, “Practicing Law Without a License,” is not specifically listed as criminal activity at section 101(a)(15)(U)(iii) of the Act. The statute, however, also provides for any “similar activity” to the listed qualifying 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). The nature and elements of the certified criminal activity must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the criminal statutes in question, “Extortion” and “Practicing Law Without a License.”

Under Washington law, the crime of “Practicing Law Without a License” is defined as “Unlawful Practice of Law” and occurs when (a) an individual who is a nonlawyer practices law or holds himself or herself out as entitled to practice law; (b) a legal provider² holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that an individual who is a nonlawyer holds an investment or ownership interest in the business; (c) an individual who is a nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law; (d) a legal provider works for a business that is primarily engaged in the practice of law, knowing that an individual who is a nonlawyer holds an investment or ownership interest in the business; or (e) an individual who is a nonlawyer shares legal fees with an individual who is a lawyer. Wash. Rev. Code Ann. § 2.48.180(2).

“Extortion” under Washington law is defined as to knowingly obtain or attempt to obtain by threat property or services of the owner. Wash. Rev. Code Ann. § 9A.56.110. A review of the two statutes demonstrates that they do not contain elements that are substantially similar. Wash. Rev. Code Ann. § 2.48.180(2) does not require the “threat” which is a primary element in Washington’s “Extortion” statute.

On appeal, the Petitioner asserts that he was “threatened with deportation and coerced out of more money to continue the fraudulent representation.” He contends that the certifying official indicates at Part 3.1 of the Form I-918 Supplement B that he was the victim of extortion and fraud, and the Director denied his petition because the certifying official had not listed the statutory code for “Extortion” at Part 3.3. However, although the Petitioner argues that he was threatened and coerced out of money, we must analyze the nature and elements of the certified crime rather than the facts underlying the incident. *See* 8 C.F.R. § 214.14(a)(9).

Although the certifying official indicated that the Petitioner was a victim of “Extortion,” he did not identify “Extortion” as the criminal activity investigated or prosecuted. *See* 8 C.F.R. § 214.14(c)(2)(i). Rather, the certifying official indicated that the only crime investigated or prosecuted was “Practicing Law Without a License,” defined under Washington law as “Unlawful

² “Legal provider” means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law. Wash. Rev. Code Ann. § 2.48.180(1)(a).

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Practice of Law,” which is not substantially similar to “Extortion” or any other qualifying crime. The police report, criminal information, and letter from Chief of Police [REDACTED] Police Department, [REDACTED] Washington, do not indicate that the certifying official or any other law enforcement entity investigated “Extortion” or any other qualifying criminal activity relating to the Petitioner. The Petitioner has not established that the nature and elements of the certified crime are substantially similar to “Extortion” or any other qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. The Petitioner has not, therefore, established that he is the victim of a qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

IV. CONCLUSION

The Petitioner has not established by a preponderance of evidence that he was the victim of qualifying criminal activity. In consequence, the Petitioner also cannot meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his petition was properly denied.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of R-G-M-*, ID# 12831 (AAO Nov. 2, 2015)