



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

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

MATTER OF P-M-C-

DATE: NOV. 10, 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 Petitioner subsequently filed a motion to reconsider, which the Director denied. The Petitioner then filed a motion to reopen and motion to reconsider, which the Director also denied. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition because the Petitioner did not establish that he was the victim of qualifying criminal activity and that he suffered resultant substantial physical or mental abuse. On appeal, the Petitioner submits a brief.

I. 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 activity in clause (iii) of section 101(a)(15)(U) of the Act, which also provides that a qualifying criminal activity involves the specifically listed crimes “or any similar activity in violation of Federal, State, or local criminal law. . . .”

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:

(a) *Definitions.* As used in this section, the term:

...

(9) Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

...

(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 . . . ;

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

...

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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.”

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who last entered the United States in March 2004 without inspection, admission, or parole. 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 September 17, 2012. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant on the same day. On October 28, 2013, the Director issued a request for evidence (RFE) requesting evidence that the crime listed on the Form I-918 Supplement B was a qualifying criminal activity and that the Petitioner suffered substantial physical or mental abuse as a result of a qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility and the Director denied the Form I-918 on these grounds. The Director also denied the Form I-192. The Petitioner timely filed a motion to reconsider the decision. The Director granted the motion to

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reconsider, but found that the new evidence and arguments submitted were insufficient to change the previous decision. The Petitioner then filed a motion to reopen and reconsider. The Director granted those motions, but again found that the evidence and arguments submitted were insufficient to change the previous decision. The decision remained denied and the Petitioner appealed the denial of the Form I-918. On appeal, the Petitioner claims that he suffered substantial physical or mental abuse as a result of being a victim of a qualifying criminal activity under the regulation.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw that part of the Director's decision concerning qualifying criminal activity, but dismiss the appeal as the evidence in the record does not demonstrate that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity.

A. Qualifying Criminal Activity

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Deputy District Attorney with the [REDACTED] Oregon District Attorney's Office (certifying official), on June 12, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as blackmail, extortion, and attempt to commit one of those offenses. In Part 3.3, the certifying official referred to Oregon Revised Statute (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 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, the certifying official indicated that the Petitioner was the victim of someone "falsely represent[ing] himself as an Immigration Attorney . . . [who] as a result extorted approximately \$12,000." The certifying official further noted that "threats to notify law enforcement and have the [Petitioner] deported kept [him] from reporting the incident" and that approximately 45 other individuals were similarly preyed upon by these false representatives.

Although all three of the certified statutes concern the crime of theft under Oregon law, ORS § 164.075 specifically criminalizes theft by extortion and provides:

(1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

- (a) Cause physical injury to some person;
- (b) Cause damage to property;
- (c) Engage in other conduct constituting a crime;

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(d) Accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

...

(i) Inflict any other harm that would not benefit the actor.

Extortion is defined under federal law as: “the obtaining of property from another, with . . . consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” 18 U.S.C. § 1951(b)(2). The definition of “theft by extortion” under Oregon law is substantially similar to the definition of extortion under federal law. The Petitioner demonstrated that he was the victim of extortion, which is a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. As a result, we withdraw the portion of the Director’s decision that finds otherwise.

B. Substantial Physical or Mental Abuse

At Part 3.6 of Form I-918 Supplement B, which asks for a description of any known or documented injury to the Petitioner, the certifying official left the space blank. In his September 6, 2012 affidavit, the Petitioner stated that he paid P-S- and J-V-¹ a total of \$12,000 for legal assistance with the immigration status for himself and his wife. Although the men promised that the Petitioner and his wife would receive a green card in nine months and citizenship after a year, the only times that P-S- and J-V- contacted them was to demand additional money. The Petitioner stated that the men often threatened to report him and his wife to immigration authorities for deportation and that he became very scared that he would have to leave his family behind. The Petitioner stated that he was very angry at J-V- and P-S- and that he was embarrassed at being tricked. The Petitioner also stated that, as a result of the stress he was put under from the situation, he no longer felt that he could do his job and as a result, stepped down from his managerial position.

In conjunction with his motion to reconsider, the Petitioner submitted a letter from [REDACTED] a licensed professional counselor, who diagnosed the Petitioner with Post Traumatic Stress Disorder, anxiety, and major depressive disorder. [REDACTED] detailed how P-S- and J-V- took advantage of the Petitioner and his wife and repeatedly asked them to pay additional fees while threatening deportation if they did not comply. [REDACTED] noted that the Petitioner reported a loss of trust in others and has begun heavily depending on his wife, which further negatively impacts his self-esteem. She also states that the threats of deportation seriously impacted the Petitioner as he feared that deportation to Mexico would break up his family and jeopardize the family’s safety.

¹ Names redacted to protect the individuals’ privacy.

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Although the Petitioner described the facts of the crime and stated that the crime affected his concentration, it is unclear as to how the psychological impact of the criminal activity alone affected the Petitioner's mental state. The Petitioner and ██████████ noted that the criminal activity imposed economic strain on the Petitioner, with the Petitioner stating that he was anxious about continuing to owe his friends money even two years later. In addition, the Petitioner and his wife were undocumented immigrants with a pre-existing fear of deportation. Neither the Petitioner nor ██████████ explained the degree to which the qualifying criminal activity aggravated any pre-existing condition. See 8 C.F.R. § 214.14(b)(1) (citing factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of pre-existing conditions). Consequently, as the record is presently constituted, 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.

IV. 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. The portion of the Director's decision finding that the Petitioner was not a victim of qualifying criminal activity is withdrawn, however, the record does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity.

ORDER: The appeal is dismissed.

Cite as *Matter of P-M-C-*, ID# 14913 (AAO Nov. 10, 2015)