



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

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

MATTER OF U-G-E-

DATE: NOV. 17, 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 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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act defines qualifying criminal activity as:

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 labor contracting (as defined at 18 U.S.C. § 1351); 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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

* * *

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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."

(b)(6)

Matter of U-G-E-

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on December 8, 2000, 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 November 25, 2013. On September 23, 2014, the Director issued a request for evidence (RFE) that, among other things, the crime certified on the law enforcement certification as being investigated or prosecuted would be considered a crime related to those in the regulation. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-918 and the Petitioner timely appealed that denial.

On appeal, the Petitioner contends that he is a victim of qualifying criminal activity because fraud is substantially similar to obstruction of justice and he has submitted sufficient evidence under the "any credible evidence" standard.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, including the evidence submitted on appeal, the Petitioner has not established his eligibility.

A. Certified Criminal Activity

In his declarations, the Petitioner recounted that he paid an individual to file immigration paperwork for him who was not eligible to practice law. The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED], [REDACTED] Oregon, Sheriff's Office (certifying official), on June 21, 2013. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as Other: "Fraud." In Part 3.3, the certifying official refers to Oklahoma Statute Annotated title 21 section 1541.2 (false statements or pretenses, loss greater than 500 dollars), and 8 C.F.R. § 292.2 (organizations and accredited representatives) 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, she wrote "unlawful practice of law and fraud." At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official wrote "financial loss."

B. Fraud/False Statements or False Pretenses under Oregon Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and incident report from the [REDACTED] Sheriff's Office indicate that obtaining property by fraud/false statements or pretenses was the crime investigated. The crime of fraud/false statements or pretenses 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 fraud/false

statements or pretenses offense 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 comparing the nature and elements of the statutes in question.

Under the Oklahoma Penal Code:

If the value of the money, property or valuable thing referred to in Section 1541.1 of this title is Five Hundred Dollars (\$500.00) or more but less than One Thousand Dollars (\$1,000.00), any person convicted pursuant to this section shall be guilty of a felony and shall be punished by incarceration in the county jail for not to exceed one (1) year or incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes, and if the value is One Thousand Dollars (\$1,000.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not more than ten (10) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

Okla. Stat. Ann. tit. 21, § 1541.2 (West 2015).

Section 1541.1 of title 21 of the Oklahoma Penal Code prohibits obtaining or attempting to obtain property by trick or deception, false statements or pretenses, or confidence game, and states as follows:

Every person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any person, firm or corporation any money, property or valuable thing, of a value less than Five Hundred Dollars (\$500.00), by means or by use of any trick or deception, or false or fraudulent representation or statement or pretense, or by any other means or instruments or device commonly called the "confidence game", or by means or use of any false or bogus checks, or by any other written or printed or engraved instrument or spurious coin, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

Okla. Stat. Ann. tit. 21, § 1541.1 (West 2015).

Under 18 U.S.C. § 1505, Obstruction of proceedings before departments, agencies, and committees occurs when:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to

written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . .

18 U.S.C. § 1505 (West 2015).

No elements of Okla. Stat. Ann. tit. 21 § 1541.2 are similar to obstruction of justice under 18 U.S.C. § 1505. Obstruction of justice involves misrepresenting information or using threats or force to impede or obstruct a pending proceeding before a U.S. department, agency or committee. The statute investigated here involves cheating, defrauding, or obtaining property through the use of trick or deception, or false representation, etc. where the property involved is 500 dollars or more. Okla. Stat. Ann. tit. 21 § 1541.2 does not involve willfully withholding, misrepresenting, altering, or by other means falsifying any information in a government proceeding or the use of threats or force – essential elements in the federal obstruction of justice statute.

We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that her office or any other law enforcement authority investigated or prosecuted the perpetrator for obstruction of justice. In fact, the certifying official did not check the box at Part 3.1 for obstruction of justice, but rather listed the offense investigated as “other: fraud.”

On appeal, the Petitioner describes the facts of the case and asserts that because the fraudulent scheme in this case involved obstructing “the proper administration of the US Immigration Laws,” the crime falls under the federal obstruction of justice statute. However, as previously stated, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The Petitioner has not established that the nature and elements of Okla. Stat. Ann. tit. 21, § 1541.2 are substantially similar to 18 U.S.C. § 1505 and there is no evidence in the record that obstruction of justice was actually detected or investigated at the time the crime was reported or thereafter. The Petitioner has, therefore, not established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Furthermore, to establish that he was the victim of the qualifying crime of obstruction of justice in these proceedings, the Petitioner must demonstrate that the perpetrator committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of

or undue control over the Petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The evidence in the record does not demonstrate that the perpetrator committed obstruction of justice as a way to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or as a means to further his abuse or exploitation over the Petitioner through manipulation of the legal system. The record lacks evidence that the perpetrator was engaged in any other criminal activity at the time, and there is no basis to conclude that any commission of obstruction of justice was done to avoid or frustrate any ongoing law enforcement investigation of him. The record also does not show that the perpetrator obstructed justice to further abuse, exploit or exert undue control over the Petitioner through the manipulation of the legal system.

The Petitioner further asserts that USCIS did not apply the credible evidence standard and that the petition should not be denied unless the evidence is not credible or it otherwise fails to establish eligibility. The Petitioner is correct that all credible evidence relevant to the petition must be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4). However, this evidentiary standard is not equivalent to a petitioner's burden of proof. *See* 8 C.F.R. § 214.14(c)(4). Accordingly, the submission of evidence that is relevant and credible may not always suffice to meet a petitioner's burden of proof. Here, the Petitioner has submitted relevant and credible evidence regarding the fraud of which he was a victim. However, the preponderance of the relevant evidence does not show that the criminal offenses of which he was a victim, unauthorized practice of law and fraud, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including obstruction of justice. The Petitioner has, therefore, not established that he is the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. The Regulation at 8 C.F.R. § 292.2 is Not Qualifying Criminal Activity

On the Form I-918 Supplement B, the certifying official also provided the citation for 8 C.F.R. § 292.2 as the criminal activity being investigated or prosecuted. In his brief, the Petitioner asserts that the act of which he was a victim is prohibited by the federal regulations at 8 C.F.R. § 292.2 and 8 C.F.R. § 1.2. The regulation at 8 C.F.R. § 292.2 dictates that some organizations may designate a representative to practice before USCIS and the Board of Immigration Appeals, and lays out the process by which such organizations can qualify, the designation process, withdrawal of recognition, and accreditation of representatives. 8 C.F.R. § 1.2 provides definitions as used in the Code of Federal Regulations, including the definitions of preparation and practicing law. However, neither 8 C.F.R. § 292.2 nor 1.2 prohibits any activity, nor are either of them listed as qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. The Petitioner has not provided any legal argument to suggest that either statute is substantially similar to any qualifying criminal activity. As such, the Petitioner has not established that he is the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

D. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not 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.

E. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

F. 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 also did not 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.

G. Jurisdiction

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not 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.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of U-G-E-*, ID# 14442 (AAO Nov. 17, 2015)