



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

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

MATTER OF H-M-H-P-

DATE: NOV. 18, 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 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;

....

Extortion is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), 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 [.]

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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on January 15, 1997 without inspection, admission or parole. On March 13, 2012, the Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. On April 8, 2013, the Director issued a request for evidence (RFE) that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying

(b)(6)

Matter of H-M-H-P-

criminal activity, extortion. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918 because the Petitioner did not establish that he has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner submits a brief and additional evidence.¹

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we affirm the Director's decision to deny the Form I-918.

A. Qualifying Criminal Activity

In his declaration, the Petitioner recounted that on April 4, 2011, he was in front of the paint store when another car crashed into the side of his truck. The Petitioner stated that because he did not speak English well, he called his wife² to the scene to help him talk to the driver of the other car, [REDACTED]. The Petitioner explained that when his wife arrived, [REDACTED] told her that if they paid her \$400.00 to repair her vehicle, she would not call immigration authorities or the police. The Petitioner reported being very afraid, and because they did not know what to do, his wife gave [REDACTED] two post-dated checks for \$200.00 each. The Petitioner indicated that after consulting an attorney, they stopped payment on the checks, and [REDACTED] became very angry, demanded twice the money and told them repeatedly that she would have them deported if they did not pay her a total of \$830.00 by a date certain. The Petitioner indicated that they reported the incident to the police, and subsequently cooperated with law enforcement leading to [REDACTED] arrest and conviction for extortion.³

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Chief Deputy District Attorney, [REDACTED] District Attorney's Office, [REDACTED] Colorado (certifying official) on December 9, 2011. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as extortion. In Part 3.3, the certifying official listed Colorado Revised Statutes 18-3-207(1) (criminal extortion) as the statutory citation for 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, he indicated that following an auto accident, the

¹ USCIS records reflect that the Petitioner's wife also filed a Form I-918 arising out of the same incident, and the Director approved her petition on April 2, 2013. The Petitioner on appeal submits a copy of his wife's Form I-918 and asserts that the record demonstrates that he suffered substantially more mental abuse than his wife. We are not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp.2d 800, 803 (E.D. La. 1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

² The record reflects that the couple had a child together in [REDACTED] and married civilly on [REDACTED] 2012 in [REDACTED] Colorado.

³ The record contains news articles indicating that [REDACTED] pled guilty, but does not contain court records indicating the disposition of the criminal proceedings.

(b)(6)

Matter of H-M-H-P-

driver of the other car, [REDACTED] threatened to call immigration authorities unless the Petitioner and his spouse paid her \$400.00, and had the Petitioner's spouse sign a statement agreeing to make two payments to her totaling \$400.00. At Part 3.6, which asks the certifying official to describe any injury to the victim, he stated that no physical injury was documented.

At the time of the offense, Colo. Rev. Stat. § 18-3-207(1) provided, in part, that a person commits criminal extortion if :

(a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and

(b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by:

(I) Performing or causing an unlawful act to be performed; or

(II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat.

The police report in the record described the events as the Petitioner recounted and additionally states that [REDACTED] was arrested for a violation of Colo. Rev. Stat. § 18-3-207(1.5), which at the time of her arrest provided:

A person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, threatens to report to law enforcement officials the immigration status of the threatened person or another person.

The statute indicates that a violation of Colo. Rev. Stat. § 18-3-207(1.5) is a Class 4 felony. Newspaper articles submitted into the record indicate that [REDACTED] pled guilty following her arrest for criminal extortion and was sentenced to one year of probation and 40 hours of community service.

B. Substantial Physical or Mental Abuse

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

(b)(6)

Matter of H-M-H-P-

In his declaration, the petitioner stated that the case against [REDACTED] was well publicized in the [REDACTED] area, and that he read many comments from people who thought he and his wife deserved the criminal treatment from [REDACTED] because they were illegally in the United States. He stated that the accident changed his life in many ways, in that he no longer goes out much, except to work, because he is afraid he will get pulled over or taken away by immigration authorities. The Petitioner submitted a statement from his spouse indicating that during the incident, the Petitioner lost a lot of weight, went to the doctor with pain in his chest,⁴ and that he does not sleep well and is afraid to drive. She stated that they do not go out any more because the Petitioner is too scared.

The Petitioner submitted a letter from [REDACTED] a licensed counselor, who evaluated the Petitioner over the course of three visits in 2013. [REDACTED] stated that, in describing the event, the Petitioner became increasingly anxious and that he shared with her that his heart was beginning to race. Her report indicated that the Petitioner told her that following the incident, he went to the medical clinic because he thought he was having a heart attack, and was informed that his symptoms were caused by stress. [REDACTED] stated that the Petitioner told her that the time between the accident and [REDACTED] arrest was very stressful, and that during this time he had daily symptoms. [REDACTED] stated that the Petitioner described symptoms resulting from [REDACTED] criminal conduct including, in part, fear and worries, feelings of weakness, trembling, nervousness, panic, loss of trust in others, and a decreased desire to socialize. According to the psychological report, the Petitioner has an underlying general anxiety disorder that limits his capacity to manage social situations, that he suffers from post-traumatic stress disorder (PTSD) as a result of the extortion incident, and that his quality of life has suffered.

On appeal, the Petitioner asserts that the nature of the injury inflicted, and the severity of the perpetrator's conduct is substantial, in that the statute of criminal extortion investigated or prosecuted in this case includes as an element the substantial threat to cause mental or physical harm if the victim does not comply with the perpetrator's demand. According to the Petitioner, because an element of criminal extortion involves a substantial threat, which under the statute is "reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur." Colo. Rev. Stat. Ann. § 18-3-207(3) (West 2011), it is reasonable to presume that such criminal conduct will result in substantial fear and substantial mental abuse. While the Petitioner is correct that an element of criminal extortion under Colo. Rev. Stats. Ann. § 18-3-207(1) includes a substantial threat likely to induce a belief that the threat will be carried out and result in significant damage, a conviction under the cited statute is not tantamount to establishing substantial harm in the instant proceeding. We must look to the record to determine whether the Petitioner was substantially harmed from having been a victim of qualifying criminal activity.

⁴ The record contains a report from the Petitioner's physician, [REDACTED] indicating that the Petitioner complained of chest pain unrelated to exertion on May 6, 2011, and upon testing, his EKG was normal and cardiovascular examination was negative for chest pain and irregular heart beat/palpitations.

(b)(6)

Matter of H-M-H-P-

The record does not establish that the Petitioner suffered substantial harm as a victim of qualifying criminal activity under the factors enumerated at 8 C.F.R. § 214.14(b)(1). Neither the Form I-918 Supplement B nor the petitioner's declaration indicates that he suffered any physical injury as a result of the incident. While the Petitioner states that he is afraid to leave the house, he stated during his psychological evaluation that he continues to work, and the record does not show that he is incapacitated or on medication for his anxiety or PTSD. He did not include a probative, detailed description of how the criminal activity has impacted his daily life, his interactions with others, and his overall well-being. Further, the Petitioner expresses fear of leaving his home because he is afraid he will be deported or taken away. The Petitioner is not afraid of further extortion by [REDACTED]. The fact that the Petitioner may be deported due to his illegal status pre-existed any injury from the qualifying criminal activity and may not be used as the basis to demonstrate that the Petitioner suffered substantial physical or mental abuse as a result of victimization from qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(b)(1) states that any substantial physical or mental abuse suffered must be a result of the qualifying criminal activity.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of H-M-H-P-*, ID# 14366 (AAO Nov. 18, 2015)