



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

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

MATTER OF A-N-U-

DATE: NOV. 24, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. We dismissed the Petitioner's appeal in a decision dated May 11, 2015. The matter is now before us on a motion to reconsider. The motion will be denied.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, based on findings that the evidence did not establish that the Petitioner was a victim of qualifying criminal activity; suffered substantial mental or physical abuse as a result; possessed information regarding the criminal activity; and was helpful in the investigation or prosecution of the criminal activity.

In our dismissal of the Petitioner's appeal, we found that he was not a victim of qualifying criminal activity. We noted that, according to the certifying official's entries on the Form I-918 Supplement B, U Nonimmigrant Status Certification, the Petitioner was the victim of theft, which is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the Petitioner argued that he was also the victim of obstruction of justice because he suspected that the perpetrator of the theft against him also reported him to Immigration and Customs Enforcement, we noted that the certifying official did not list obstruction of justice on the Form I-918 Supplement B as a crime that was investigated or prosecuted in relation to the Petitioner. Additionally, we indicated that the Petitioner did not provide the required statutory analysis to demonstrate that the nature and elements of the crime of which he was a victim, theft, were substantially similar to obstruction of justice or any other qualifying criminal activity. Therefore, we found that the Petitioner was not the victim of obstruction of justice or any qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, we also found that the Petitioner could not establish the remaining requirements for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

On motion, the Petitioner asserts that the regulation at 8 C.F.R. § 214.14(a)(9) does not require that he demonstrate that the nature and elements of theft are substantially similar to the nature and elements of a specifically listed qualifying crime, "but instead that the nature and elements match up with the nature and elements of the entire list." He contends that the interpretation by the U.S. Department of Homeland Security of the term "similar activity" is too narrow, and that Congress

intended to provide U nonimmigrant status to victims of “crimes against people that deprive the victims of specific rights, such as life, liberty and property.” He argues that theft falls within this general category of crimes.

The Petitioner’s assertion is without merit. According to 8 C.F.R. § 214.14(a)(9), to demonstrate that the crime of which he was a victim is substantially similar to a qualifying crime, the Petitioner must provide a statutory analysis demonstrating that the “nature and elements of the offense . . . are substantially similar to the statutorily enumerated list of criminal activities.” The U Nonimmigrant Status Interim Rule also provides that “for a criminal activity to be deemed similar to one specified on the statutory list, the similarities must be substantial.” 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (Interim Rule) (emphasis added). The Interim Rule explains that this “takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable.” *Id.* The “similar activity” provision allows victims of qualifying crimes that are not specifically listed, but the elements of which are substantially similar to one of those listed, to qualify for U nonimmigrant status.

The Petitioner also claims that, even if 8 C.F.R. § 214.14(a)(9) could be interpreted to require a statutory comparison between the crime of which the Petitioner was a victim and a statutorily-listed qualifying crime, he has demonstrated that theft is substantially similar to extortion. In his appeal brief, the Petitioner mentioned the statutorily-enumerated crimes of both obstruction of justice and extortion, but did not clearly explain whether he considered one or both to be substantially similar to theft. On motion, he focuses on his claim that extortion is substantially similar to theft, so we will address only that portion of his claim and not whether obstruction of justice is implicated.

According to the Petitioner, the Board of Immigration Appeals (Board) found in *Matter of Cardiel-Guerrero*, 25 I&N Dec. 12, 22-23 (BIA 2009), that “theft is generically defined as including property obtained by extortion.” The Petitioner referred to *Matter of Cardiel-Guerrero* in his brief on appeal and he again misinterprets the finding in *Matter of Cardiel-Guerrero* and its relevance to his case. In *Matter of Cardiel-Guerrero*, the Board considered whether the respondent’s conviction for receipt of stolen property under California Penal Code (Cal. Penal Code) § 496(a) constituted a theft offense, and therefore an aggravated felony. *Id.* at 13-14. The Board stated, in pertinent part, that “‘theft’ is generically defined under [certain state] statutes as including property that has been obtained, among other ways, by extortion.” *Id.* at 22. The Board also noted that, pursuant to California law, extortion involved obtaining property from another with “‘coerced and unwilling consent’ that is compelled by the offender’s ‘wrongful use of force or fear.’” *Id.* at 20.

The Board’s conclusion in *Matter of Cardiel-Guerrero* does not support a finding that the nature and elements of theft in violation of Maryland Criminal Law (Md. Crim. Law) § 7-104, of which the Petitioner was a victim, are substantially similar to those of extortion. First, *Matter of Cardiel-Guerrero* focused on California law and discussed the theft statutes of some other states, but did not specifically address Md. Crim. Law § 7-104. Furthermore, the Board stated that theft in some states includes, among other things, the taking of property through extortion. This conclusion recognizes

that theft statutes are broad, and can include different forms of takings. Theft in violation of Md. Crim. Law § 7-104 does not include takings by extortion. Md. Crim. Law § 7-104 provides that theft can be committed in several ways, including “Unauthorized control over property,” “Unauthorized control over property—By deception”; “Possessing stolen personal property”; knowing “[c]ontrol over property lost, mislaid, or delivered by mistake”; and obtaining “[s]ervices available only for compensation” by deception or with knowledge that they are provided without consent. Md. Crim. Law § 7-104 does not include “coerced and unwilling consent” or the “wrongful use of force or fear” which could support a finding of theft by extortion. *Matter of Cardiel-Guerrero* at 20. Instead, these elements appear in a separate Maryland extortion statute, Md. Crim. Law § 3-701, which provides, in pertinent part:

(b) A person may not obtain, attempt to obtain, or conspire to obtain money, property, labor, services, or anything of value from another person with the person’s consent, if the consent is induced by wrongful use of actual or threatened:

- (1) force or violence;
- (2) economic injury; or
- (3) destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person.

The evidence does not indicate that the Petitioner was the victim of extortion under Md. Crim. Law § 3-701, or that this crime was investigated or prosecuted in relation to the Petitioner. Furthermore, the nature and elements of Md. Crim. Law § 7-104, of which he was a victim, are not substantially similar to extortion.

Finally, the Petitioner argues that, even if he was not the victim of a qualifying crime, “prosecution of a non-qualifying crime may still be sufficient for U status if there is some connection between the non-qualifying crime and qualifying criminal activity.” He cites the Interim Rule, which notes that “qualifying criminal activity may occur during the commission of non-qualifying criminal activity.” 72 Fed. Reg. 53014, 53018. The Interim Rule indicates that, although investigators may discover that a perpetrator has committed both qualifying and non-qualifying crimes, it is possible that they will only charge the perpetrator with a non-qualifying crime. *Id.* However, this is not an exception to the requirement that the Petitioner demonstrate that he is a victim of a qualifying crime, or a crime the nature and elements of which are substantially similar to a qualifying crime. Instead, it is an explanation for the fact that the statutory list of qualifying crimes is a “non-exclusive list,” which allows a victim of a crime that is substantially similar to a listed qualifying crime to qualify for U nonimmigrant status. *Id.* The evidence in this case does not establish that a qualifying crime was investigated or prosecuted in relation to the Petitioner, or that theft under Md. Crim. Law § 7-104 is substantially similar to a qualifying crime.

As in all visa petition proceedings, the Petitioner bears the burden of proving 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*

*Matter of A-N-U-*

*Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the motion is denied.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of A-N-U-*, ID# 15102 (AAO Nov. 24, 2015)