



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

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

MATTER OF O-M-I-N-

DATE: OCT. 6, 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.

The Director denied the petition because the Petitioner did not establish that she was the victim of qualifying criminal activity. 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;

Extortion is 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 native and citizen of Mexico who entered the United States in 1997 without inspection, admittance, 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 July 30, 2012. The Petitioner also filed a Form I-912 Application for Advance Permission to Enter as Nonimmigrant on the same day. On September 10, 2013, the Director issued a Request for Evidence (RFE) requesting evidence that the crime listed on the Form I-918 Supplement B was qualifying criminal activity. The Director issued a Notice of Intent to Deny (NOID) on April 10, 2014 again stating that the crime listed on the Form I-918 Supplement B did not appear to be qualifying criminal activity. The Petitioner responded to both notices with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility.

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Accordingly, the Director denied the Form I-918 and the Form I-192. The Petitioner filed a timely appeal. On appeal, the Petitioner claims that she was the 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 was Certified

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 March 14, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 of Form I-918 Supplement B as blackmail, extortion, witness tampering, "other: theft," 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, she indicated that the Petitioner was the victim of someone "falsely represent[ing] themselves as an Immigration Attorneys/ Accredited Reps . . . [who] as a result extorted over \$250,000.00 in fees from approximately 50 victims seeking immigration assistance."

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;
- (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;

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...

(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 Director found that the Petitioner was not a victim of qualifying criminal activity, because the crime she was a victim of was economic in nature. The Act does not specify what general types of crimes may be considered qualifying, but instead provides a specific list, such as extortion, blackmail, and embezzlement, which often involve economic loss, as qualifying crimes. Moreover, extortion is not solely pecuniary in nature as it involves threats of force and/or inducement through fear. The Petitioner demonstrated that she 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

Beyond the Director’s decision, the record as presently constituted does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. At Part 3.6 of the 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 her June 18, 2012 affidavit, the Petitioner stated that she paid P-S- and J-V-¹ \$7,000.00 for legal assistance with immigration papers. Although the men promised that the Petitioner would receive a green card in six to nine months of filing, the men routinely put off contacting her and the Petitioner learned that her application had been denied a year later. The Petitioner said that she became very angry due to her trust being betrayed and that her anger and stress resulted in her having heart problems due to anxiety attacks. The Petitioner also noted that P-S- and J-V- threatened to turn her and her family over to immigration authorities for deportation. In her November 29, 2013 declaration, the Petitioner reported suffering financial stress due to their actions so that she did not have funds for her daughters to attend college and she was forced to short sell the family residence.

In response to the RFE, the Petitioner submitted an evaluation from [REDACTED] a licensed professional counselor, who reports that the Petitioner suffers from Post-Traumatic Stress Disorder, Generalized Anxiety Disorder, and Dysthymic Disorder. [REDACTED] details how the Petitioner was raised on a farm in Mexico and came to the United States when pregnant with her first child. [REDACTED] states that the Petitioner arrived at the evaluation with a barely-manageable level of anxiety. He states that, when he began asking the Petitioner about the events with P-S- and J-V-, the Petitioner had difficulty speaking and experienced a range of emotions. [REDACTED] states that the Petitioner has flashbacks when she sees J-V- at church, has become hyper-vigilant, and is angry and irritable towards her family. [REDACTED] states that the Petitioner did not exhibit any of these

¹ Names redacted to protect the individuals’ privacy.

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symptoms prior to her interaction with these men and that her anxiety is causing physical symptoms especially with her heart.

Although the Petitioner described the facts of the crime, she did not include a detailed description of how the criminal activity has impacted her daily life, her interactions with others and her overall well-being. Prior to her involvement with J-V- and P-S-, the Petitioner was the subject of an approved family petition which required her to travel to Mexico to finish processing. The Petitioner stated that she was scared to do so and her attorney filed multiple extensions to delay her requirement to do so. The Petitioner's declaration describes the financial pressures that the family is faced with, which she attributes to the payments made to J-V- and P-S-. The evidence in the record indicate multiple, pre-existing stressors concerning the Petitioner's immigration status and the financial status of the family, however, [REDACTED] report merely notes their existence without explaining how the qualifying criminal activity and her lack of immigration status might interplay. Instead, he attributes all of the Petitioner's psychological symptoms to the qualifying criminal activity with no explanation. The Petitioner's declarations state multiple stressors, but she does not include sufficient detail for us to determine that the qualifying criminal activity resulted in substantial physical or mental abuse. Consequently, as the record is presently constituted, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires her to demonstrate that she 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, beyond the decision of the Director, 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 O-M-I-N-*, ID# 14447 (AAO Oct. 6, 2015)