



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

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

MATTER OF N-H-J-

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 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 entered the United States in January 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 June 17, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant on the same day. On December 5, 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 denied the Form I-918 on these grounds. The Director also denied the Form I-192. The Petitioner timely filed a motion to reopen and reconsider the decision. The Director granted the motion to reopen and reconsider, but found that the new evidence and arguments submitted were insufficient to change the previous decision. The decision remained denied and the Petitioner appealed the denial of the Form

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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 May 15, 2013. 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 \$15,900." 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 sixty 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;

(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 he 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 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 June 10, 2013 affidavit, the Petitioner stated that he paid P-S- and J-V-¹ a total of \$15,900 for legal assistance with the immigration status for himself and his wife. Although the men promised that the process would move quickly, the Petitioner did not hear anything from them for nearly a year until P-S- and J-V- contacted them to demand additional money. The Petitioner stated that he and his wife “were very frightened when [J-V-] threatened to report [them] to immigration and have [them] deported, so felt that [they] had no choice but to pay . . . the money . . .”

In response to the RFE, the Petitioner submitted a letter from [REDACTED] a licensed psychologist, who reported that the Petitioner suffers from Generalized Anxiety Disorder and Post-Traumatic Stress Disorder, as well as insomnia. [REDACTED] detailed how the Petitioner and his wife left Mexico to escape extreme poverty, crime, and corruption and how the Petitioner and his wife have lived in fear of arrest and deportation since their arrival in the United States in 1992 because they did not have legal status in the United States. [REDACTED] reported that the Petitioner’s fear was intensified by losing his “life savings” to P-S- and J-V- and the threats made by those men to place the Petitioner in deportation proceedings. [REDACTED] noted that the Petitioner reported being afraid whenever someone knocked on their door or when he left the house and that he does not answer the telephone if he does not know who is calling. [REDACTED] referred to treatment of the Petitioner by his primary care physician for physical ailments such as high blood pressure, gastrointestinal problems, and trouble sleeping.

¹ Names redacted to protect the individuals’ privacy.

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Although the Petitioner described the facts of the crime, he did not include a description of how the criminal activity has impacted his daily life, his interactions with others and his overall health and well-being. ██████████ report detailed the facts of the Petitioner's situation, but did not indicate the extent to which the qualifying criminal activity aggravated any pre-existing conditions. The Petitioner and ██████████ both indicate that the Petitioner had a high level of anxiety prior to the qualifying criminal activity due to his immigration status. The evidence in the record does not indicate the degree to which the qualifying criminal activity aggravated this 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 N-H-J-*, ID# 13997 (AAO Oct. 6, 2015)