U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-P-C-

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, initially approved the petition, but subsequently revoked that approval. The matter is now before us on appeal. The appeal will be dismissed.

The Director revoked the approval of the petition because the Petitioner did not establish that she was the victim of qualifying criminal activity and that she 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 --
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> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
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> (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:
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> . . .
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> (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.
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> . . .
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> (b) *Eligibility*. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :
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> (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
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> 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).
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> . . .
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> (4) Credible Evidence Considered
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> 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 2002 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 September 2, 2012. The Petitioner also filed a Form I-912 Application for Advance Permission to Enter as Nonimmigrant on the same day. On October 1, 2013, the Director approved the Petitioner's petition. On February 6, 2015, the Director issued a Notice of Intent to Revoke (NOIR) stating that the Petitioner should submit evidence demonstrating that she suffered substantial physical or mental harm as a result of qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

Accordingly, the Director revoked the approval of the Form I-918. The Petitioner timely appealed the revocation of the Form I-918. On appeal, the Petitioner claims that she 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 was Certified

The Petitioner submitted a Form I-918 Supplement B signed by , Deputy District Attorney with the 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 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:
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> (a) Cause physical injury to some person;
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> (b) Cause damage to property;
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> (c) Engage in other conduct constituting a crime;
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> (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;

. . .

(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

At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official left the space blank. In her September 5, 2012 affidavit, the Petitioner stated that she paid P-S- and J-V- a total of $7,500.00 for legal assistance with her immigration status. The Petitioner stated that she had lived without legal status for years and had no hope previously that she could get legal status until she met with J-V- and P-S-. She noted her disadvantaged background growing up in Mexico and stated that the promises about legal status triggered memories about her past. The Petitioner stated that the amount of money that she paid to P-S- and J-V- depleted her savings and caused her financial stress. The Petitioner stated that she had to forego her medication due to financial pressure and that the stress of the situation caused her anxiety and depression to worsen. The Petitioner described how she was no longer able to speak and ended up having to take a month off from work to recover from the psychological blow dealt by J-V- and P-S-.

In conjunction with her initial filing, the Petitioner submitted a September 11, 2012 letter from a licensed social worker, who reports that the Petitioner has suffered from depression, Post-Traumatic Stress Disorder (PTSD) and anxiety due to her underprivileged upbringing in Mexico. detailed how the Petitioner suffered a major depressive disorder following the realization that she would not be receiving the benefit promised by P-S- and J-V- and after Immigration and Customs Enforcement (ICE) came to the Petitioner's house to arrest her. noted that the Petitioner attributed her arrest by ICE to P-S- as he had claimed to be in contact with government officials.

In response to the Director's NOIR, the Petitioner submitted a May 26, 2014 letter from , a licensed professional counselor, who reports that the Petitioner has a history of depression and anxiety due largely to an impoverished childhood in Mexico, where she also endured repeated sexual abuse as a child, and that these conditions were exacerbated by the immigration fraud of which she was a victim. noted that the Petitioner's physical symptoms of

anxiety and stress increased due to the fraudulent actions of P-S- and J-V-, and that she attributed the end of her relationship with her children's father to the stress placed upon the couple through the immigration fraud. [redacted] diagnosed the Petitioner with PTSD, generalized anxiety disorder, and recurrent major depressive disorder.

The Petitioner's statement and the therapists' reports demonstrate that the criminal activity perpetrated against the Petitioner exacerbated existing fears and anxiety regarding the Petitioner's lack of immigration status in the United States and her fear of returning to Mexico and the poverty and violence in which she grew up. However, 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). While we are sensitive to the Petitioner's desire not to return to Mexico, the preponderance of the evidence does not demonstrate that the Petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of extortion, as required by section 101(a)(15)(U)(i)(I) of the Act and under the standards and factors explicated in the regulation at 8 C.F.R. § 214.14(b)(1). Consequently, as the record is currently 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, 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 B-P-C-*, ID# 14548 (AAO Oct. 6, 2015)