



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

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

MATTER OF E-G-

DATE: OCT. 14, 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; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; that he was helpful in the investigation or prosecution of qualifying criminal activity; or that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court. 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;

...

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

The eligibility requirements for U nonimmigrant classification are further explained 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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 Turkey who last entered the United States on September 20, 2006, pursuant to a valid F-1 nonimmigrant visa. 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 20, 2013. On July 16, 2014, the Director issued a request for evidence (RFE) for the Petitioner to establish that the crime of which he was a victim was a qualifying crime, and that he was a victim of substantial physical or mental abuse 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 denied the Form I-918. The Petitioner timely appealed the denial of the Form I-918.

On appeal, the Petitioner claims that he is a victim of the qualifying crimes of false imprisonment and witness tampering as well as the related crime of terrorist threats, because he was involved in an altercation on a local commuter train. He states that the threats made to him by a fellow passenger along with that passenger blocking the door of the train amount to terrorist threats, witness tampering, and false imprisonment and that those actions qualify him for eligibility for U nonimmigrant classification.

(b)(6)

Matter of E-G-

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] with the [REDACTED] Police Department, [REDACTED] California (certifying official), on July 24, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as false imprisonment, witness tampering, and “related crime(s),” identified as “terrorist threats.” In Part 3.3, the certifying official referred to California Penal Code (CPC) §§ 136.1 (dissuading a witness or victim), 236 (false imprisonment), and 422 (criminal threats) as the criminal activity that was investigated or prosecuted. At Part 4.5, the certifying official states that the only CPC section listed on the police report is § 422, but that “the reported criminal activity also meets the elements of CPC § 236 (false imprisonment) . . . [and] § 136.1(b) (c) (dissuading a witness by use of force or threats).” At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the Petitioner aided [REDACTED] police with a drug use investigation aboard a [REDACTED] train. After the suspected drug user was removed from the train, “one of his associates physically assaulted the [Petitioner] and threatened him with death.” The same individual blocked the Petitioner’s egress from the train, followed him, and again threatened him. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner had “[n]o known physical injuries,” but that he was placed in “sustained fear for his life and safety and suffered substantial mental abuse as a result of the crime.”

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the Director’s decision to deny the Petitioner’s Form I-918 U petition.

A. Qualifying Criminal Activity

The [REDACTED] Police Department report indicates that, contrary to Part 3.3 of Form I-918 Supplement B, the only offense investigated by the certifying agency was CPC § 422 (threat with intent to terrorize). The crime of terrorist threat is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the crime investigated, terrorist threats, must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under California law, terrorist threats are defined as threats to commit a crime involving death or great bodily harm with the intent that the person hearing the threat believes that it is real and consequently is in fear for his own or his family’s safety. CPC § 422(a). On appeal, the Petitioner states that terrorist threats as he experienced them were substantially similar to the qualifying crimes of false imprisonment and witness tampering. False imprisonment under CPC § 236 is defined as “the unlawful violation of the personal liberty of another.” Witness tampering under CPC § 136.1 is defined, in part, as “knowingly and maliciously prevent[ing] or dissuad[ing] any witness or victim

from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.” In comparing the elements of terrorist threats to false imprisonment, the Petitioner on appeal states that “it was through the threats that the perpetrator imprisoned the [P]etitioner.” As stated above, the inquiry is not fact-based, but instead involves a comparison of statutory language. The California terrorist threats statute requires a threatening statement with an intent to act whereas the false imprisonment statute requires a restriction on a person’s ability to move or travel. *See* CPC § 422(a) and CPC § 236. The two statutes contain no overlapping elements and, therefore, the California law criminalizing terrorist threats is not substantially similar to false imprisonment. Similarly, the California law concerning witness tampering involves keeping a witness or victim from participating in a legal investigation or prosecution whereas the California law criminalizing terrorist threats contains no requirement of impeding a legal investigation. *See* CPC § 136.1. Although a particular threat may also operate to impede a legal investigation, the terrorist threats statute does not contain that element and, therefore, is not substantially similar to the California law criminalizing witness tampering.

On appeal, the Petitioner asserts that the Director erred in not considering the comment of the certifying official at Part 4.5 of the Form I-918 Supplement B that the facts of the reported criminal activity, namely terrorist threats under CPC § 422, meet elements of other California criminal statutes, specifically witness tampering and false imprisonment, which are both qualifying criminal activities under the Act. The evidence in the record, however, does not indicate that such crimes were detected or investigated by the certifying official. The comment by the certifying official in Part 4.5 of the Form I-918 Supplement B indicates that witness tampering or false imprisonment could have been investigated, however, neither the comment nor the police report indicate that those crimes were actually detected or investigated by the certifying agency. We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4). The police report indicates that only CPC § 422 was detected or investigated. In sum, the Petitioner has not demonstrated that the elements of terrorist threats under CPC § 422 are substantially similar to witness tampering under CPC § 136.1, false imprisonment under CPC § 236, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act and, moreover, the record does not indicate that witness tampering under CPC § 136.1 or false imprisonment under CPC § 236 were detected, investigated or prosecuted by the certifying agency. The Petitioner is, therefore, not the victim of any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

D. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

E. Jurisdiction

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

The Petitioner did not establish that he was the victim of a qualifying crime. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of E-G-*, ID# 14287 (AAO Oct. 14, 2015)