U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-P-E-

DATE: SEPT. 11, 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* 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. The matter is now before us on appeal. The appeal will be dismissed.

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:

> rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in labor contracting (as defined at 18 U.S.C. § 1351); 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 burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Venezuela who last entered the United States on June 23, 2004 as an L-2 nonimmigrant. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on April 29, 2013. The Director issued a request for evidence (RFE) that the Petitioner was the victim of qualifying criminal activity, suffered substantial physical or mental abuse as a result, possessed information about the crime, and was helpful in the investigation or prosecution of the crime. The Petitioner responded to the RFE with additional evidence. The Director found that the evidence was insufficient to establish that the Petitioner was the victim of qualifying criminal activity and therefore that the Petitioner could not establish eligibility for the remaining statutory requirements under section 101(a)(15)(U)(i) of the Act. The Director denied the petition and the Petitioner filed a timely appeal.

III. CERTIFIED CRIMINAL ACTIVITY

The Form I-918 Supplement B was signed on December 28, 2012, by [redacted] Deputy Sheriff, [redacted] Florida (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity of which the Petitioner was a victim as "Obstruction of Justice" and "Other: Fraud." At Part 3.3, he provided no statutory citations for the criminal activity that was investigated or prosecuted. The certifying official stated at Part 3.5 that the Petitioner collected statements from other victims of "fraud [and] obstruction

of justice perpetrated by [M-V-C-][1] in her misrepresentation and posing as an attorney practicing before [USCIS]." However, although the certifying official indicated that the Petitioner collected statements from others regarding fraud and obstruction of justice, the certifying official did not further indicate that this criminal activity was actually investigated or prosecuted by law enforcement or other officials as it relates to the Petitioner.

IV. ANALYSIS

We conduct appellate review on a *de novo* basis. The relevant evidence submitted below and on appeal does not establish that the Petitioner was a victim of a qualifying criminal activity or any similar activity.

The Director found that the Petitioner did not establish that he was the victim of a qualifying criminal activity. The Director concluded that the Petitioner had not established that the crime of fraud, which is not among the statutorily listed qualifying crimes, was substantially similar to a qualifying criminal activity. The Director further indicated that the Form I-918 Supplement B did not contain the statutory citations listing the criminal activity that was investigated or prosecuted. The Director also found that the Petitioner did not show that the crime of obstruction of justice was investigated or prosecuted in relation to him as a victim; the Director explained that the Petitioner's personal statement described the fraud he had suffered but did not discuss obstruction of justice, and the supporting documentary evidence listed victims other than the Petitioner. Furthermore, the Director noted that the supporting documentation indicated that M-V-C- was convicted of "False Use of Seals," not obstruction of justice.

According to the judgment, docket sheet, and plea agreement the Petitioner submitted with his response to the RFE, M-V-C- was charged with two counts of False Use of Seals in violation of 18 U.S.C. § 506. One count was dismissed and M-V-C- pled guilty on [redacted] 2013 to the remaining count of False Use of Seals in violation of 18 U.S.C. § 506(a)(2). The crime of False Use of Seals is not specifically listed as a qualifying criminal activity 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 False Use of Seals must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

The Petitioner contends on appeal that M-V-C-'s conviction for False Use of Seals was "part and parcel of the obstruction of justice crime. [M-V-C-] obstructed justice by issuing documents with a fake seal. [She] used the seal to deceive people from reporting her activities or from prosecuting her." However, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the criminal activity that was investigated with a qualifying

[1] Name withheld to protect the individual's identity.

crime. *See* 8 C.F.R. § 214.14(a)(9). The Petitioner has not demonstrated that any crime other than False Use of Seals under 18 U.S.C. § 506(a)(2) was investigated or prosecuted.

The Petitioner avers that "the elements of the crime for which [M-V-C-] was convicted are similar in nature" to the qualifying criminal activity of obstruction of justice as certified in the Form I-918 Supplement B.[2] The Form I-918 Supplement B, however, did not provide a statutory citation for the crime of obstruction of justice that was investigated or prosecuted. The petitioner cites 18 U.S.C. § 1519 as an example of an obstruction of justice crime under Federal law and contends that "the existence of the fake seal and the fraud as an element of that crime is the same as the obstruction of justice for using said fake seal."

18 U.S.C. § 506 provides, in pertinent part:

> (a) Whoever—
>
> > (2) knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any description . . .
> >
> > shall be fined under this title, or imprisoned not more than 5 years, or both.

18 U.S.C. § 1519 provides:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

The nature and elements of False Use of Seals in violation of 18 U.S.C. § 506(a)(2) are not substantially similar to obstruction of justice under 18 U.S.C. § 1519. False Use of Seals under 18 U.S.C. § 506(a)(2) involves knowing use of a fraudulently made or altered seal of an agency of the United States upon a document. It does not include the element of obstruction of justice under 18 U.S.C. § 1519 of the intent to impede or influence an investigation or the administration of a case. Although the petitioner correctly notes that both statutes include references to falsification, the remaining statutory elements are not substantially similar.

Furthermore, even if False Use of Seals were substantially similar to obstruction of justice, the

[2] The Petitioner does not argue in his brief on appeal that the nature and elements of the second crime listed in the Form I-918 Supplement B, "Other: Fraud," are substantially similar to a qualifying crime.

Petitioner has not demonstrated that he was a victim of either crime. The regulation at 8 C.F.R. § 214.14(c)(2)(i) provides that a petitioner for U nonimmigrant status must provide a Form I-918 Supplement B which certifies, among other things, that the petitioner has been the victim of qualifying criminal activity that has been investigated or prosecuted. The Form I-918 Supplement B does not indicate that the Petitioner was the victim of False Use of Seals and the record does not contain evidence such as police reports, conviction records, or other relevant, credible documentation indicating that he was a victim of that crime. Although the Form I-918 Supplement B does indicate that the Petitioner was the victim of obstruction of justice, the certifying official provided no detail regarding the investigation or prosecution of obstruction of justice in relation to the petitioner; instead, the certifying official stated only that the petitioner collected statements from other individuals who were the victims of fraud and obstruction of justice perpetrated by M-V-C-. Furthermore, the documentary evidence the Petitioner submitted, including conviction records for M-V-C-, news articles regarding the investigation and prosecution against M-V-C-, a private background investigation regarding M-V-C-, and the affidavits of the Petitioner and his wife, do not state that obstruction of justice was investigated or prosecuted.

In response to the RFE, the Petitioner submitted a typed letter, purportedly from the certifying official, stating that the Sheriff's Department investigated unauthorized practice of law, obstruction of justice, and fraud, and that the Petitioner was a victim of these crimes. The letter further states that Federal authorities eventually took over the case, superseding the authority of the Sheriff's Department and prosecuting M-V-C- for use of false USCIS seals. However, as the Director noted in her decision, this letter is unsigned and is not on letterhead from the Sheriff's Department. The Petitioner has not provided supporting evidence to demonstrate that the letter was written by the certifying official.

On appeal, the Petitioner asserts that the Director erred in requiring that he obtain "duplicate signatures" from the certifying official, contending that the signature of the certifying official on the Form I-918 Supplement B should be sufficient. However, the signature of the certifying official on the Form I-918 Supplement B, dated December 28, 2012, does not establish that the certifying official wrote the letter, which was submitted on April 21, 2014 in response to the RFE.

Here, the record does not demonstrate that any crime other than False Use of Seals was investigated or prosecuted. The Petitioner has not established that the nature and elements of this crime is substantially similar to obstruction of justice or any other qualifying criminal activity. Furthermore, the Petitioner has not established that he was a victim of False Use of Seals or obstruction of justice. Therefore, the Petitioner has not demonstrated that he is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. As a result, he cannot demonstrate that he meets any of the remaining eligibility criteria at 101(a)(15)(U)(i)(II)-(IV) of the Act.

V. CONCLUSION

The Petitioner has not established that he was the victim of a qualifying criminal activity and he, therefore, also cannot show that he satisfies any of the remaining statutory criteria at section

101(a)(15)(U)(i)(II)-(IV) of the Act. Therefore, the Petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act.

As in all visa petition proceedings, the Petitioner bears the burden of proving his 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-P-E-*, ID#13297 (AAO Sept. 11, 2015)