



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

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

MATTER OF A-Q-G-

DATE: DEC. 20, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. See Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied both the initial petition and subsequent motion to reconsider, concluding that the Petitioner had not established that he was a victim of qualifying criminal activity and, therefore, could not meet the statutory criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(I)-(IV) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he was a victim of criminal activity that is substantially similar to one of the qualifying crimes and, therefore, satisfies the statutory criteria for U classification.

Upon *de novo* review, we will dismiss the appeal.

I. 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 foreign labor contracting (as defined in section 1351 of title 18, United States Code); 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 a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

For the reasons discussed below, upon review of the entire record, the Petitioner has not overcome the Director’s grounds for denial.

A. Victim of Qualifying Criminal Activity

1. Criminal Activity Certified as Being Detected,¹ Investigated, or Prosecuted

¹ The term “investigation or prosecution,” as used in section 101(a)(15)(U)(i) of the Act, also includes the “detection” of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

(b)(6)

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The record contains a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed by a detective sergeant in the [REDACTED] Police Department (certifying official). Part 3.1 indicates that the criminal activity committed against the Petitioner involved, or is similar to, the crimes of extortion and attempt to commit any of the named crimes. Part 3.3 cited to two sections of the Indiana Code (IC): section 35-45-2-1, which generally corresponds to the offense of intimidation; and section 35-43-4-1, which does not correspond to the offense of theft, but rather provides definitions for "Chapter 4, Theft, Conversion, and Receiving Stolen Property." The description of the criminal activity being investigated at part 3.5 refers to the "attached incident report," and part 3.6, which asks for a description of any known or documented injuries to the victim, also refers to the "incident report for financial injury" and that "[n]o other injury [was] documented. The incident report lists the theft type as "Other" and the crime code as "LARCENY-ALL."² The incident report indicates that an officer was dispatched to the Petitioner's home who indicated through a family member that he and his family had been working with an "attorney" in Arizona "to become legal citizens and obtain work permits." Although the Petitioner wired her money, she then "ceased communication" and the Petitioner did not receive his citizenship paperwork or work permits. The record contains an updated case report which indicates that, on the advice of local counsel, the Petitioner amended the report to include information that, "if they called police," the "attorney" in Arizona "would call I.C.E. and report them so that they would be deported."

As defined in 8 C.F.R. § 214.14(a)(14), a "victim" for purposes of U classification is a petitioner who has suffered harm as a result of the commission of qualifying criminal activity. Here, although the certifying official indicated that the Petitioner was a victim of "criminal activity involving or similar to" extortion or attempt to commit extortion in part 3.1 of the Supplement B, he did not cite to a corresponding Indiana statute for that offense in part 3.3 as the criminal offense that was actually investigated or prosecuted. The certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.3 establishes the crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner's victimization. The purpose of part 3.1 is only to identify the general category of criminal activity to which the offense(s) in part 3.3 may relate. See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). We determine, in our sole discretion, the evidentiary value of a Supplement B. See 8 C.F.R. § 214.14(c)(4).

² We note that the record also contains a case report, which lists the crime code as fraud, but does not identify the Petitioner. Even if we were to consider the Petitioner as one of the six unnamed family members referenced, the Supplement B does not list fraud as a crime which was detected or investigated. In addition, the Petitioner does not argue, and the record does not establish, that fraud is substantially similar to extortion. Finally, the record does not contain any indication that the certifying agency took any action other than documenting the claim.

2. The Record Does Not Show That the Certified Crimes Are Substantially Similar to a Qualifying Crime

When determining whether certified criminal activity is substantially similar to a statutorily enumerated crime, the proper inquiry is a comparison of the nature and elements of the crime investigated to one of the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The certifying official, however, has not identified the subsection of the Indiana Code for intimidation and has only cited to the general theft definitions statute, not the theft statute itself. As a result, there is not sufficient information to establish what crime, if any, was detected or investigated, or to perform such a comparison.³ Without the requisite information on the Supplement B, the Petitioner cannot establish that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

In her decision, the Director further determined that the Petitioner did not demonstrate eligibility for U nonimmigrant status pursuant to subsections 101(a)(15)(U)(i)(I)–(IV) of the Act. As we have found the Petitioner ineligible for the reasons discussed above, we will not further discuss the remaining eligibility requirements under section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated that he was a victim of qualifying criminal activity. He, therefore, necessarily cannot satisfy the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. See section 291 of the Act, 8 U.S.C. § 1361; see also *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 A-Q-G-*, ID# 22045 (AAO Dec. 20, 2016)

³ Further, the accompanying incident and case reports document only the information the Petitioner provided. The record does not contain any indication that the certifying agency took any action other than recording the Petitioner's claims. Therefore, the Petitioner has not established that the certifying agency actually detected or investigated any criminal activity.