



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

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

MATTER OF L-E-B-E-

DATE: FEB. 8, 2016

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.

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[.]

Extortion is 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 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

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. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, was admitted to the United States as a B-2 nonimmigrant visitor on December 18, 1989, with permission to remain until December 29, 1989. The record reflects that the Petitioner has not left the United States since his last entry.

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 12, 2012. On September 27, 2013, the Director issued a request for evidence (RFE) that the crime listed on the Form I-918 Supplement B was qualifying criminal activity for which the Petitioner was victimized and harmed. The Director issued a notice of intent to deny (NOID) on April 10, 2014,

Matter of L-E-B-E-

reiterating the insufficiencies in the record previously addressed in the RFE and further concluding that the Petitioner was a victim of crimes that were only economic in nature, and therefore, not qualifying criminal activity. The Petitioner responded to the RFE and NOID with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918. The Petitioner filed a timely appeal. On appeal, the Petitioner claims that he was the victim of multiple qualifying criminal activities.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on a review of the evidence submitted below and on appeal, the Petitioner has not overcome the Director's decision to deny his Form I-918.

A. Certified Criminal Activity

Deputy District Attorney [REDACTED] District Attorney's Office in Oregon (certifying official), signed the Form I-918 Supplement B on March 14, 2012, listing the criminal activities of which the Petitioner was a victim at part 3.1 as involving or being similar to blackmail, extortion, and witness tampering. The certifying official also listed the Petitioner as a victim of "Other: theft" and attempt to commit any of the aforementioned 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 activities that were 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 the Petitioner was the victim of individuals who, "[F]alsely represented themselves as Immigration Attorneys/Accredited Reps and as a result extorted over \$250,000.00 in fees from approximately 50 victims seeking immigration assistance. Threats to notify law enforcement and have the victims deported have kept many victims from seeking help"

In his response to the NOID, the Petitioner provided a letter from the office of the U.S. Attorney for the District of Oregon (USADO), stating that the office was conducting an ongoing criminal investigation in conjunction with the Federal Bureau of Investigation for potential violations of federal law under 18 U.S.C., including blackmail, money laundering, wire fraud, and witness tampering as, "There are numerous victims who have come forward" The Director found that the Petitioner did not establish he was a victim because the USDAO was not the certifying official, and the crimes listed by that office were not certified on the Form I-918 Supplement B. However, although the Director correctly concluded that the USADO was not the certifying official and the crimes certified on the Form I-918 Supplement B were not those identified by the USADO, the Director does not indicate why the Form I-918 Supplement B is otherwise deficient.

Our *de novo* review indicates that the certifying official's office and USADO have conducted independent investigations for possible violations of state and federal laws for which the Petitioner was a victim. The certifying official has identified the criminal activity that has been investigated and the certification is supported by a letter from the [REDACTED] which

Matter of L-E-B-E-

specifically references the Petitioner and indicates that the department was involved in an ongoing investigation of the certified criminal activity.

B. The Crime of “Theft By Extortion” (ORS § 164.075) Is Qualifying Criminal Activity

As discussed above, the Form I-918 Supplement B indicates that the [REDACTED] District Attorney’s Office conducted a “preindictment investigation” for “Theft by Extortion” under ORS § 164.075, which states, in pertinent part:

- (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; . . . or
 - (i) Inflict any other harm that would not benefit the actor

Extortion is defined under federal law as, “[T]he obtaining of property from another, with his 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). Contrary to the Director’s determination, extortion is not solely pecuniary in nature as it involves threats of force or inducement through fear.

The Petitioner bears the burden of proof to demonstrate his eligibility for U nonimmigrant classification by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). That burden includes the Petitioner showing that he was the victim of a qualifying crime that was investigated or prosecuted by a certifying law enforcement agency. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. The Petitioner has demonstrated that he was the

Matter of L-E-B-E-

victim of extortion, which is a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. We, therefore, withdraw the portion of the Director's decision that finds otherwise.¹

C. Substantial Physical or Mental Abuse

At part 3.6 of the 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 statements, the Petitioner recounted that around October 2010, he met J-V-,² a minister affiliated with P-S-,³ an "international detective," who indicated that they could obtain a green card on his behalf because of P-S-'s "special contacts." The Petitioner relayed that J-V- and P-S- threatened to terminate the process and indicated that he would receive "letters of deportation" if he talked about his case with "any other attorney." The Petitioner stated that he made cash payments to J-V- and P-S-, totaling \$6,950, by withdrawing money from his savings account, borrowing money from his brother, and working in landscaping. The Petitioner also stated that as a result, this has affected his ability to provide for his family and pay his bills, he has postponed his dreams of becoming a nurse, and he has lost trust in other individuals. The Petitioner further stated that he has been diagnosed with various mental health conditions, and a licensed therapist recommended that he "see a counselor regularly," which he cannot afford due to his financial situation, so he has sought "help and guidance thorough [his] church."

The Petitioner submitted an evaluation from a licensed professional counselor, who reported that the Petitioner suffers from Post-Traumatic Stress Disorder, Generalized Anxiety Disorder, and Major Depressive Disorder - Recurrent. The counselor stated as "a victim of an extensive conspiracy to extort money from immigrants[,] the Petitioner "has suffered considerably," including financial losses totaling more than one-half his average annual income, difficulty relating to others, increased anxiety, and shame. The counselor relayed the Petitioner feels anger, depression, and frustration because his work fluctuates, making it difficult to pay his bills, including money owed to his brother. The counselor also stated the Petitioner, "[H]as profound trouble trusting people . . . especially has difficulty trusting church ministers[,] and as he doubts his own judgment, "this is very debilitating for him." The counselor further relayed that the Petitioner fears for his personal safety since his personal information could be used for "illicit reasons" and as a means to extort him again. The counselor concluded the "psychological toll" of the Petitioner's victimization will have "an even more critical and long-lasting impact on his well[.]being[.]" and if untreated, his symptoms "could lead to a severe mental health crisis, including self-harm."

The Petitioner submitted a letter of support from Pastor [REDACTED] who reiterated the Petitioner's general distrust since his victimization. Pastor [REDACTED] generally stated the Petitioner, "[Doesn't] sleep well, he looks desperate, and sometimes he looks angry." Pastor [REDACTED] further stated that he has counseled the Petitioner many times, and as a church, they pray for the Petitioner "so that he can

¹ As the Petitioner has established that he is a victim of extortion, we need not further determine whether he is also a victim of the qualifying criminal activities of blackmail and witness tampering as defined in Oregon law.

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

Matter of L-E-B-E-

find peace in his heart.” The Petitioner also submitted a letter of support from [REDACTED] who stated he is “a minister” in the Petitioner’s church, and who indicated that the Petitioner has requested prayers from him to legalize the Petitioner’s status in the United States because the Petitioner worries about returning to [REDACTED] Mexico, an “extremely violent city.”

The Petitioner described the facts of the crime and provided a general description of how the criminal activity has impacted his daily life, interactions with others, and his overall wellbeing. However, the record reflects that the Petitioner had a preexisting fear of removal from the United States as he has been undocumented since the expiration of his nonimmigrant visitor status in December 1989. Although the Petitioner, his licensed professional counselor, and Pastor [REDACTED] generally indicated that the Petitioner has become distrustful of other individuals since his victimization, they do not explain the degree to which the qualifying criminal activity aggravated any preexisting conditions. 8 C.F.R. § 214.14(b)(1) (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 preexisting conditions). Moreover, as reported by the licensed professional counselor, the Petitioner indicated that he “especially has difficulty trusting church ministers” since his victimization. Yet, the record indicates that the Petitioner has sought ongoing counseling services from Minister [REDACTED] and Pastor [REDACTED] the same minister who introduced him to J-V- and P-S-. Thereby, the record is unclear concerning the type and degree of harm the Petitioner has experienced because of the qualifying criminal activity. Accordingly, 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 these proceedings, the Petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The portion of the Director's decision finding that the Petitioner was not a victim of qualifying criminal activity is withdrawn. However, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of the qualifying criminal activity. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i)(I) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of L-E-B-E-*, ID# 15459 (AAO Feb. 8, 2016)