



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

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

MATTER OF J-M-C-C-

DATE: FEB. 10, 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. Upon a motion to reconsider, and a subsequent motion to reopen and to reconsider, the Director again 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 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:

....

(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.

....

(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.

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

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).

....

(4) Credible Evidence Considered

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

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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 2000 without inspection, admission, 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 13, 2012. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on the same day. On October 23, 2013, the Director issued a request for evidence (RFE) to establish, among other things, that the crime listed on the Form I-918 Supplement B was qualifying criminal activity. Upon receipt and review of the Petitioner’s response, the Director denied the Form I-918 because the Petitioner did not establish that he was the victim of qualifying criminal activity, and as such did not meet the remaining requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The Petitioner filed a motion to reconsider, and the Director again denied the Form I-918, because the crime of theft by extortion was not qualifying criminal activity. The Petitioner subsequently filed a motion to reopen and to reconsider, which the Director denied, determining that the crime of coercion was not a qualifying criminal activity, and the Petitioner’s financial losses did not constitute substantial physical or mental abuse. The Petitioner timely appealed. On appeal, the Petitioner submits a brief.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the parts of the Director’s decision finding that the Petitioner was not a victim of qualifying criminal activity, did not possess information, was not helpful, and that qualifying criminal activity did not occur within the jurisdiction of the United States. We 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 [REDACTED] Deputy District Attorney with the [REDACTED] 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 Rep[resentatives] . . . [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:

- (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;
- ...
- (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 certified crime 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. Here, the certifying official stated that the Petitioner was the victim of blackmail and extortion, and listed Oregon’s only extortion provision as one of the crimes investigated or prosecuted. Moreover, extortion is not solely pecuniary in nature as it involves threats of force and/or inducement through fear. The Petitioner demonstrated that he 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.

With the second motion on the Director’s decision, the Petitioner submitted a letter from the Assistant United States District Attorney, District of Oregon, indicating that there is an ongoing criminal investigation of the perpetrators for immigration fraud, including allegations of witness tampering and blackmail, both of which constitute qualifying criminal activity. As we determine

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that the Petitioner is a victim of extortion, a qualifying criminal activity, we will not further address these crimes.¹

B. Substantial Physical or Mental Abuse

We agree with the Director that the record does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. 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 June 7, 2012, affidavit, the Petitioner stated that after getting a recommendation from a church pastor to use their services, he paid P-S- and J-V-² \$6,000.00 for legal assistance with immigration papers in January 2011, and was promised that he would receive a green card. The Petitioner stated that J-V- contacted him twice and requested the same basic information about his case, which he had already provided in January 2011, and in late November 2011 requested an additional \$1,350.00 to process the forms. The Petitioner indicated that he did not pay the supplemental fee, as he had learned that J-V- was involved in a scam. In his initial and supplemental affidavits, the Petitioner reported that he suffered from fear, sleepless nights, headaches and anxiety resulting from these events. He also stated that that he had to borrow \$4000 to pay the fee, wiped out his life savings of \$2000.00, and that the financial stress affected his friendships and family life. The record reflects that the Petitioner has three children, two of whom have needed speech and learning therapies.

The record contains two evaluations from [REDACTED] Clinical Psychologist. In August 2012, [REDACTED] stated that the Petitioner presented with hopelessness, anxiety, inability to sleep and hypervigilance, for which he was prescribed an anti-depressant medication, and diagnosed the Petitioner with PTSD, Major Depressive Disorder, Moderate, and Moderate Anxiety due to suffering from the criminal activity. In a subsequent evaluation in December 2013, [REDACTED] stated that the Petitioner continued to experience insomnia, hopelessness and anxiety, resulting in tension headaches and muscle pains, and the Petitioner's doctor increased the dose of the anti-depressant medication. [REDACTED] updated the Petitioner's diagnoses to PTSD (in partial remission), Major Depressive Disorder, Moderate, with Anxious Distress (in partial remission).

Although the Petitioner described the facts of the crime, he did not include a detailed description of how the criminal activity has impacted his daily life, his interactions with others and his overall well-being. The Petitioner's affidavits state that he is fearful of retaliation by P-S- and J-V- and mistrusting of institutions such as law enforcement, the legal system, and the church. The record does not establish that the Petitioner's trust and fear issues constitute substantial abuse. The Petitioner states that he is distracted at work, makes mistakes, worries about his children constantly, and has headaches, physical pains and sore muscles due to the anxiety that he suffers as a direct result of the criminal activity. The Petitioner's affidavits state multiple stressors concerning the

¹ The Petitioner does not allege, and the record does not establish, that he suffered substantial physical or emotional abuse as a result of witness tampering or blackmail that is different in scope or intensity from the claimed abuse he experienced as a result of extortion, which we consider below.

² Names redacted to protect the individuals' privacy.

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Petitioner's immigration status and the health of his children, yet [REDACTED] evaluations merely note their existence without explaining how the qualifying criminal activity and the Petitioner's lack of immigration status might interplay, and [REDACTED] does not include sufficient detail for us to determine that the qualifying criminal activity resulted in substantial physical or mental abuse. We acknowledge that the Petitioner takes medicine for depression, and that there could be a causal connection between the Petitioner's diagnoses and the certified criminal activity. Nevertheless, the record indicates that the Petitioner is employed, has paid his friends back, and his psychological diagnoses are in partial remission. Ultimately, the Petitioner has not provided sufficient evidence to show the severe nature of the injury inflicted or of the harm suffered, or that there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Consequently, as the record is presently constituted, 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.

C. Remaining Criteria

The Director determined that, 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 criminal activity, 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 authority in the investigation or prosecution of a qualifying criminal activity, or that qualifying criminal activity occurred within the jurisdiction of the United States.

The record establishes that the Petitioner possesses information regarding qualifying criminal activity, is being or is being or is likely to be helpful in the prosecution or investigation of such activity, and that such activity occurred in the United States. He thus meets the criteria at subsections 101(a)(15)(U)(i)(II), (III) and (IV) of the Act, and the portions of the Director's decision to the contrary are withdrawn.

IV. CONCLUSION

The record establishes that the Petitioner meets the qualifying criteria at subsections 101(a)(15)(U)(i)(II), (III), and (IV) of the Act. The record does not, however, establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity, as required at subsection 101(a)(15)(U)(i)(I) of the Act.

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 J-M-C-C-*, ID# 15399 (AAO Feb. 10, 2016)