



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

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

MATTER OF R-S-

DATE: FEB. 19, 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 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: . . . trafficking; . . .

involuntary servitude; . . . extortion; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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).

(Emphasis added).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, “U Nonimmigrant Status Certification,” signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . the applicant has been a victim of qualifying criminal activity the certifying official’s agency is *investigating or prosecuting*[.]

(Emphasis added).

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.”

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:

(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 . . . ;

(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. . . .;

(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.

(Emphasis added).

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 is a native and citizen of India who claims to have last entered the United States on August 14, 2010, as a H-1B nonimmigrant worker. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on April 7, 2014, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director issued a request for evidence (RFE) establishing, among other things, that the criminal offense set forth on the law enforcement certification constituted a qualifying criminal activity or was substantially similar to a qualifying crime. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility. The Director denied the Form I-918, concluding that the Petitioner had not established that he was a victim of qualifying criminal activity or criminal activity that was substantially similar to one of the qualifying crimes, and consequently, had also not demonstrated that: he suffered resultant substantial physical or mental abuse; possessed information

(b)(6)

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concerning the qualifying criminal activity; had been helpful to authorities investigating or prosecuting qualifying criminal activity; and such qualifying activity occurred within the jurisdiction of the United States. The Petitioner timely appealed and submits a brief and additional evidence.

A. Claimed Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed on March 11, 2014, by [REDACTED] Detective, [REDACTED] Police Department, [REDACTED] California (certifying official). The certifying official checked the box marked “Other” and indicated the criminal offense of embezzlement in Part 3.1, which inquires about the criminal activity of which the Petitioner was a victim. At Part 3.3, the certifying official cited to section 487(a) of the California Penal Code, corresponding to the offense of Grand Theft by Embezzlement, as the relevant criminal statute for the charge that was investigated or prosecuted. At Part 3.5, which asks for a description of the criminal activity being investigated, the certifying official stated that the Petitioner alleged that the perpetrator of the offense embezzled money from his business and the perpetrator ultimately pled guilty to Grand Theft by Embezzlement. Regarding the Petitioner’s helpfulness, the certifying official indicated in Part 4.5 that the crime for which the perpetrator was convicted was not one of the “specified crimes” or a related crime set forth in Part 3.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director’s grounds for denial. The appeal will be dismissed for the following reasons.

A. Qualifying Criminal Activity

Upon *de novo* review of the record, the Petitioner has not established that he was a victim of a qualifying criminal activity. When determining what criminal activity a certifying agency detected,¹ investigated or prosecuted, we look to the relevant criminal statute as provided on the Form I-918 Supplement B and on any accompanying reports. Here, the only criminal activity certified at Part 3.1 of the Form I-918 Supplement B is embezzlement, which is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. The certifying official further cited to the corresponding California statute for Grand Theft by Embezzlement in Part 3.3 of the Form I-918 Supplement B. In fact, the certifying official specifically indicated that the crime investigated or prosecuted was not one of the crimes specified at Part 3 of the Form I-918 Supplement B. The underlying investigative report in the record also indicated that the offense committed was embezzlement. The record lacks any evidence from the certifying official or law enforcement records that the qualifying criminal activities of extortion, trafficking, and involuntary servitude

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

(labor abuse)² were also investigated or prosecuted, as the Petitioner maintains. In addition, the Petitioner himself acknowledges the certifying agency has declined to issue an amended Form I-918 Supplement B to reflect his claim that the criminal offenses of extortion, trafficking, and involuntary servitude were also detected, investigated, or prosecuted. Accordingly, a careful review of the record does not establish that the certifying agency detected, investigated, or prosecuted a qualifying crime committed against the Petitioner.

The Petitioner contends on appeal that we should not rely strictly on the certifying official's statements in the Form I-918 Supplement B and should instead consider the underlying criminal conduct and acts committed against him because they establish the elements of the qualifying crimes of extortion, trafficking, and involuntary servitude, notwithstanding the fact that the perpetrator was ultimately only prosecuted for the non-qualifying crime of embezzlement. While there is no question that a qualifying crime may occur during the commission of non-qualifying criminal activity, we lack the authority to engage in a fact-based inquiry into whether the underlying conduct and facts of a non-qualifying crime also establish that a qualifying criminal activity occurred. Rather, our factual inquiry in such instances focuses on only whether the Form I-918 Supplement B and the record establish that the certifying agency detected, investigated or prosecuted a qualifying crime. *See* Section 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(c)(2) (certification must state that the petitioner is the victim of qualifying criminal activity the certifying agency is investigating or prosecuting). Thus, even if a qualifying crime occurred during the commission of non-qualifying criminal activity, the certifying official must still certify, and the record must establish, that the qualifying criminal activity was in fact detected, investigated or prosecuted. Here, as discussed, our review does not establish that the certifying agency ever detected, investigated, or prosecuted the qualifying crimes of extortion, trafficking, and involuntary servitude. The Petitioner, therefore, has not established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.³

B. Substantial Physical or Mental Abuse⁴

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 credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

² In response to the Director's RFE, the Petitioner equated "labor abuse" with involuntary servitude.

³ In his brief on appeal, the Petitioner stated generally that the elements of similar criminal activity were detected, but does not provide any legal analysis comparing the nature and elements of embezzlement to any qualifying criminal activity in order to support this assertion.

⁴ Contrary to the Petitioner's assertion on appeal, the Director specifically found that the Petitioner had not established the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) 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 of Qualifying Criminal Activity

As the Petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

The Petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. He, therefore, also does not meet 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. 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 R-S-*, ID# 15571 (AAO Feb. 19, 2016)