



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

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

MATTER OF E-V-C-

DATE: JAN. 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 . . ." Theft, official misconduct, and robbery are not listed as qualifying 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 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. 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.

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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 Mexico who claims to have entered the United States in 2001 near [REDACTED] Arizona 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 October 28, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on the same day. On August 18, 2014, the Director issued a request for evidence (RFE) that, among other things, the crime listed on the Form I-918 Supplement B was a qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Forms I-192 and I-918. The Petitioner filed a timely appeal. On appeal, the Petitioner claims that he was the victim of qualifying criminal activity under the regulation, and submits a brief and copies of previously submitted evidence.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. 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. Upon review of the entire record, we affirm the Director's decision for the following reasons.

A. Certified Criminal Activity

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED], Special Victims Team Supervisor, [REDACTED] Prosecutor's Office, [REDACTED] Indiana (certifying official), on July 30, 2013. 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 involving or being similar to the qualifying crime of extortion. In Part 3.3, the certifying official referred to Indiana Code (IC) § 35-43-4-2- (West 2011)

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(theft) and IC § 35-44.1-1-1- (West 2013)¹ (official misconduct) 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, she indicated that the Petitioner “was stopped by a police officer during the police officer’s official duties. The police officer demanded money from [the Petitioner] in exchange for not arresting [him] or giving him a ticket.”²

B. The Certified Criminal Activities are not Specifically Listed as Qualifying Crimes and are not Substantially Similar to Any Qualifying Criminal Activity

The Petitioner has not demonstrated that the crimes investigated or prosecuted, theft, official misconduct, and robbery, are qualifying crimes or substantially similar to any of the qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of criminal activity involving or similar to extortion. However, there is no indication on any other part of the Form I-918 or any other document of record that she or any other law enforcement entity investigated or prosecuted the crime of extortion in relation to the Petitioner. Part 3.3 of the Form I-918 Supplement B indicates that the crimes of theft under IC § 35-43-4-2- and official misconduct under IC § 35-44-1-2 were investigated or prosecuted. The Amended Affidavit for Probable Cause, which was prepared by the ██████████ Metropolitan Police Department pursuant to the investigation and prosecution of a police officer, indicates that the crime of robbery, a Class C felony, was also investigated under IC 35-42-5-1- (West 2011). News articles of record unofficially indicate that a police officer was convicted of two counts of robbery and two counts of official misconduct, and sentenced to eight years in prison. The record contains no evidence of the detection, investigation, or prosecution of an extortion crime. The Petitioner is, therefore, not the victim of the qualifying crime of extortion.³

The Petitioner does not allege, and the record does not indicate, that the offenses cited in Part 3.3 of the Form I-918 Supplement B are specifically listed as qualifying crimes or are substantially similar to one of the enumerated crimes 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 the crimes investigated, theft and official misconduct, must be substantially

¹ Although the certifying official listed the statutory citation for official misconduct as IC § 35-44.1-1-1- (West 2013), the statutory citation to the 2011 statute governing official misconduct at the time of the offense was found at IC § 35-44-1-2 (West 2011). The statutory citation in effect at the time of the offense will be used herein.

² The facts as described in the Form I-918 Supplement B are inconsistent with the Petitioner’s own version of events, in which he indicated that the police officer stole the Petitioner’s money while he was searching the Petitioner’s car, and then threatened to arrest the Petitioner if he caught him driving without a license in the future. The Petitioner asserted that he was not aware that the police officer had taken his money until after the police officer left; there is no indication that the police officer demanded money from the Petitioner in exchange for not arresting him. However, this point is moot as the facts surrounding the events are not at issue here, but rather, as explained below, which criminal statutes were investigated or prosecuted.

³ We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

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).⁴ Theft is defined at IC § 35-43-4-2- (West 2011), which provides, in part, that “a person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.” The offense of official misconduct is defined at IC § 35-44-1-2 (West 2011), which provides, in part, that a public servant commits the offense of official misconduct who knowingly or intentionally commits an offense in the performance of the public servant’s official duties. And, while not referenced on the Form I-918 Supplement B but listed on the Amended Affidavit for Probable Cause, the offense of robbery is found at IC § 35-42-5-1 (West 2011), which provides that a person commits the offense of robbery, a Class C felony, “who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear . . .”.

The Director found that the Petitioner was not a victim of qualifying criminal activity, because the criminal activities which were investigated or prosecuted, according to the Form I-918 Supplement B, theft and official misconduct, did not involve a threat, which is an essential element of extortion. We agree that the federal offense of extortion involves a threat of force and/or inducement through fear or under color of official right, and that these elements are not present in the offenses of theft and official misconduct under Indiana law. Furthermore, the federal extortion statute involves the obtaining of property from another with their *consent*; an essential element that is not contained in the statutes defining theft, official misconduct, or robbery.

On appeal, the Petitioner asserts that the facts of what occurred to him fit the definition of extortion and that in fact, the perpetrator did threaten him.⁵ However, as mentioned above, we do not analyze the facts of the underlying offense, but compare the nature and the elements of the statutes in question. The Petitioner does not provide the requisite statutory analysis to demonstrate that the nature and elements of IC §§ 35-43-4-2- (theft) and 35-44-1-2 (official misconduct) are substantially similar to extortion under 18 U.S.C. § 1951(b)(2). As none of the offenses listed at Part 3.3 on the Form I-918 Supplement B are substantially similar to an offense enumerated at section

⁴ The Petitioner correctly points out that in her denial decision, the Director did not provide citations for the definitions of extortion used and did not provide full analysis of the citations provided by the Petitioner. However, we find no error in the Director’s ultimate determination that the nature and elements of the crimes investigated here are not substantially similar to those of the qualifying criminal activity of extortion.

⁵ The Petitioner also asserts that in her denial decision, the Director implied that the Petitioner deserved to be a victim of robbery or extortion because the Petitioner was driving without a license. The Petitioner did not offer any evidence of this bias, and after a full review of the record, we find no evidence of bias against the Petitioner in the Director’s decision. In fact, the only mention of the Petitioner’s illegal activity in the Director’s decision was when the Director was repeating what the Petitioner described in his own personal statement.

101(a)(15)(U)(iii) of the Act, the record does not establish that the Petitioner was a victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

C. Remaining Criteria

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, 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, as required by subsections 101(a)(15)(U)(i)(I) - (IV) of the Act.

IV. CONCLUSION

The Petitioner has not demonstrated that the crimes investigated or prosecuted, theft, official misconduct, and robbery, are qualifying crimes or substantially similar to any of the qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Further, as qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification, he has not met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of E-V-C-*, ID# 15188 (AAO Jan. 8, 2016)