



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

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

MATTER OF V-J-E-G-

DATE: JAN. 11, 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 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

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

....

(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 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 Guatemala who last entered the United States in July 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 May 29, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on the same day. On October 24, 2013, the Director issued a request for evidence (RFE) that the crime listed on the Form I-918 Supplement B was qualifying criminal activity. The Petitioner responded with additional evidence which the Director found insufficient to establish that the Petitioner suffered substantial physical or mental abuse based on qualifying criminal activity. Accordingly, the Director denied the Form I-918 and the Form I-192. The Petitioner filed a timely appeal. On appeal, the Petitioner claims that he was the victim of a qualifying criminal activity under the regulation and that he has undergone extreme mental and emotional hardship as a result of said victimization.

III. ANALYSIS

We review these proceedings de novo. Based on the evidence in the record, we withdraw that part of the Director's decision concerning qualifying criminal activity, but 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.

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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 15, 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 blackmail, extortion, and attempt to commit one of these offenses. In Part 3.3, the certifying official referred to Oregon Revised Statutes (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] himself as an Immigration Attorney and as a result extorted approximately \$19,000.00 from the listed victim who was seeking immigration assistance. Threats to notify law enforcement and have the victim deported kept the victim from reporting the incident."

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 crime he was a victim of was financial in nature. The Act does not specify what general types of crimes may be considered qualifying, but instead provides a specific list,

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including 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. The Petitioner also submitted a personal affidavit explaining how he was the victim of the qualifying crime of extortion, and there is no evidence in the record that suggests otherwise. Accordingly, the Petitioner has demonstrated that he was the victim of extortion, a qualifying crime listed at subsection 101(a)(15)(U)(iii) of the Act. The Director's determination to the contrary will be withdrawn.

B. Substantial Physical or Mental Abuse

Nonetheless, the record as presently constituted does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. See 8 C.F.R. § 214.14(b)(1).

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 affidavit, the Petitioner stated that he paid P-S-¹ over \$20,000.00 for legal assistance with immigration papers. Although P-S- promised the Petitioner that he and his wife would receive green cards, the Petitioner stated that P-S- avoided his telephone calls and instead demanded more money. The Petitioner stated that as a result of P-S-'s fraud, he and his wife "have suffered greatly mentally and emotionally due to the stress and anxiety" that P-S- caused them. He recounted that when they discovered they lost all of the money paid to P-S-, the Petitioner's then pregnant wife nearly suffered a miscarriage. The Petitioner also stated that he suffered from depression, stress, and anxiety and that he lost sleep, had headaches, and had a hard time concentrating. The Petitioner further stated that they "lived in fear thinking that [they] were going to be arrested and deported because of the applications being denied." The Petitioner also submitted an initial evaluation form from [REDACTED] who reports that the Petitioner suffers from major depression disorder as a result of his immigration issues. The Petitioner's affidavit and the evaluation form do not, however, include further details about the mental harm suffered as a result of the extortion or otherwise describe how the criminal activity has impacted and continues to impact the Petitioner's daily life and overall well-being. On appeal, the Petitioner also submits letters from [REDACTED] who state generally that the Petitioner suffered financially and emotionally, but do not provide any details regarding the Petitioner's alleged substantial abuse.

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,

¹ Name withheld to protect the individual's identity.

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or physical or mental soundness of the victim. Consequently, 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 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; *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 V-J-E-G-*, ID# 15454 (AAO Jan. 11, 2016)