



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

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

MATTER OF J-S-Y-

DATE: JAN. 15, 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[.]

....

(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:

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

...

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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 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).

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Korea who entered the United States on February 20, 2007, as a nonimmigrant worker. The Petitioner was placed in removal proceedings after he overstayed his nonimmigrant visa and he remains in removal proceedings. On February 3, 2011, the Petitioner filed a first Form I-918, Petition for U Nonimmigrant Status. The Director denied that Form I-918, and we then dismissed the Petitioner’s appeal filed on a Form I-290B, Notice of Appeal or Motion.

On October 7, 2013, the Petitioner filed a second Form I-918. The Director issued a request for evidence (RFE) that, among other things, the Petitioner was the victim of qualifying criminal activity. The Petitioner responded to the RFE with a brief and additional evidence relating to his claim. The Director denied the Form I-918, finding that the Petitioner did not establish that he was a victim of qualifying criminal activity, and the Petitioner timely filed a Form I-290B that is now before us. On appeal, the Petitioner submits a brief.

III. CERTIFIED CRIMINAL ACTIVITY

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Chief Assistant State Attorney, Florida State Attorney's Office, [REDACTED] Florida (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of obstruction of justice. At Part 3.3, the certifying official cited "Organized Scheme to Defraud," under Florida Statutes (Fla. Stat.) § 817.034(4)(A)(3), and "Practicing Law while Suspended/Disbarred," under Fla. Stat. § 454.31, as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. At Part 3.5 of the Form I-918 Supplement B, the certifying official described the criminal activity being investigated and/or prosecuted as the following:

[T]he order convicts [REDACTED] of "obstruct[ing] justice before the Department of Homeland Security's Citizenship and Immigration Services as it relates to [the Petitioner and his wife]. Specifically, she corruptly influenced, obstructed and impeded the due and proper administration of the law under which any pending proceeding is being had before any Department or agency of U.S." violating F.S. 817.034 (scheme to defraud) and F.S. 454.31 (practice law while disbarred).

The [REDACTED] to whom the certifying official refers is [REDACTED] who, according to other evidence in the record of proceedings, was prosecuted by the certifying agency and, ultimately, convicted under Fla. Stat. § 817.034 for engaging in an organized scheme to defraud and Fla. Stat. § 454.31 for practicing law while disbarred. At Part 3.5 of the Form I-918 Supplement B, the certifying official described known or documented injury to the Petitioner and stated that the Petitioner and his spouse have been "directly harmed" by [REDACTED] that they paid "thousands of dollars" to [REDACTED] and that the Petitioner and his spouse "suffered severe mental injury due to their loss of immigration status, loss of substantial funds, and are now proceeding with a civil lawsuit which is causing significant emotional distress to compensate for their loss." At Part 3.5 of the Form I-918 Supplement B, while not pertinent to any harm or injury to the Petitioner, the certifying official also indicated that the crime committed by [REDACTED] "is substantially similar to 18 U.S.C. [§] 1505, the federal obstruction of proceedings statute."

IV. VICTIM OF QUALIFYING CRIMINAL ACTIVITY

The preponderance of the evidence does not establish that the Petitioner is a victim of a qualifying crime or criminal activity. As noted above, the certifying official indicated on the Form I-918 Supplement B that the Petitioner was the victim of obstruction of justice and that the only criminal activity that was investigated or prosecuted was an organized scheme to defraud and practicing law while disbarred, in violation of Fla. Stat. §§ 817.034(4)(A)(3) and 454.31, respectively. According to the certifying official, the order referred to in Part 3.5 of the Form I-918 Supplement B concerned acts which violated Fla. Stat. §§ 817.034(4)(A)(3) and 454.31.

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Under the Florida Penal Code, “scheme to defraud” is defined as follows:

(3) Definitions.--As used in this section, the term:

...

(d) “Scheme to defraud” means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

Fla. Stat. § 817.034 (West 2013).

Under the Florida Penal Code, practicing law while suspended/disbarred is defined as follows:

Any person who has been knowingly disbarred and who has not been lawfully reinstated or is knowingly under suspension from the practice of law by any circuit court of the state or by the Supreme Court of the state who practices law in this state or holds himself or herself out as an attorney at law or qualified to practice law in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. § 454.31 (West 2013).

As noted above, at Part 3.5 of the Form I-918 Supplement B, the certifying official referred to an “order” convicting [REDACTED] of obstructing justice and indicated that the acts described in that order violate Fla. Stat. §§ 817.034(4)(A)(3) and 454.31. The order to which the certifying official referred is apparently an order by Circuit Court Judge [REDACTED] of the Criminal Division of the Circuit Court of the Eleventh Judicial District of Florida, dated October 11, 2012, stating the following:

THIS CUASE [sic] having come on to be heard before the court, and the court being fully advised in the premises, it is hereby stipulated: [REDACTED] the defendant, did obstruct justice before the Department of Homeland Security’s Citizenship and Immigration Services as it relates to [the Petitioner and his wife]. Specifically, she corruptly influenced, obstructed and impeded the due and proper administration of the law under which any pending proceeding is being had before any Department or agency of the United States.

Records obtained by U.S. Citizenship and Immigration Services (USCIS) from the Circuit Court of the Eleventh Judicial District of Florida indicate that Judge [REDACTED] presided over the criminal case brought by the certifying agency against [REDACTED]. The same records indicate that the charges brought in that criminal case were for practicing law while suspended/disbarred and an organized

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scheme to defraud, that the criminal case was closed on [REDACTED] 2012, and that a “finding of guilt/order” was issued by Judge [REDACTED] on [REDACTED] 2012. The records do not indicate that a charge was brought against [REDACTED] before Judge [REDACTED] under Florida or federal law for obstruction of justice or, in particular, under 18 U.S.C. § 1505, which provides that:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . .

18 U.S.C. § 1505 (West 2013).

The crimes that were investigated and prosecuted in this case are not within the list of qualifying crimes nor are they substantially similar to any of the qualifying 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). The Petitioner claims that [REDACTED] actions involved obstruction of justice; however, the proper inquiry is not a characterization of the underlying facts, but a statutory analysis comparing the nature and elements of the offenses investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9).

At Part 3.3 of the Form I-918 Supplement B, the certifying official only cited Fla. Stat. §§ 817.034(4)(A)(3) and 454.31 as the relevant criminal statutes for the criminal activity that was investigated or prosecuted, and, according to the certifying official, the order by Judge [REDACTED] referred to in Part 3.5 of the Form I-918 Supplement B concerned acts which violated Fla. Stat. §§ 817.034(4)(A)(3) and 454.31. In Part 3.5 of the Form I-918 Supplement B, the certifying official clearly indicated that the criminal activity described in the order by Judge [REDACTED] violated Fla. Stat. §§ 817.034(4)(A)(3) and 454.31 and, accordingly, we analyze whether the nature and elements of the offenses investigated, that is Fla. Stat. §§ 817.034(4)(A)(3) and 454.31, are substantially similar to the statutorily enumerated list of qualifying crimes.

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No elements of Fla. Stat. § 817.034 or Fla. Stat. § 454.31 are similar to obstruction of justice. There is no single crime which constitutes obstruction of justice under federal law; rather, Chapter 73 of Title 18 of the U.S. Code, entitled “Obstruction of Justice” includes 21 separate crimes, each of which entails obstruction of justice. As noted above, 18 U.S.C. § 1505, which governs obstruction of proceedings before U.S. departments, agencies or committees, involves misrepresenting information or using threats or force to impede or obstruct a pending proceeding before a U.S. department, agency or committee. Neither of the state criminal statutes under which [REDACTED] was prosecuted involves willfully withholding, misrepresenting, altering, or by other means falsifying any information in a government proceeding or the use of threats or force, all of which are essential elements of obstruction of proceedings under 18 U.S.C. § 1505 and nor do any of the other obstruction of justice offenses listed under Chapter 73 of Title 18 of the U.S. Code involve conduct substantially similar to the conduct proscribed by Fla. Stat. §§ 817.034(4)(A)(3) and 454.31. Similar to the treatment of obstruction of justice under federal law, Chapter 834 of the Florida Statutes, entitled “Obstructing Justice,” includes 28 separate crimes, each of which entails obstructing justice, but none of the offenses listed involve conduct substantially similar to the conduct proscribed by Fla. Stat. §§ 817.034(4)(A)(3) and 454.31.

We recognize that qualifying criminal activity may occur during the commission of a non-qualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. According to 8 C.F.R. § 214.14(a)(5), the term *investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” Here, the certifying official did not indicate that the certifying agency or any other law enforcement authority detected, investigated, or prosecuted obstruction of justice or any similar crime.

While Judge [REDACTED] issued an order stipulating that [REDACTED] committed acts which violate 18 U.S.C. § 1505, there is no indication in the record of proceedings, including on the Form I-918 Supplement B, that such acts were detected, investigated or prosecuted. In contrast, there is ample evidence in the record of proceedings, including the records obtained by USCIS from the Circuit Court of the Eleventh Judicial District of Florida, to indicate that violations of Fla. Stat. §§ 817.034(4)(A)(3) and 454.31, were detected, investigated, and prosecuted.

Furthermore, even if we were to find that the qualifying criminal activity of obstruction of justice was detected, investigated, or prosecuted, the Petitioner would need to demonstrate that [REDACTED] committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring her to justice for other criminal activity; or (2) to further her abuse or exploitation of or undue control over the Petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). The evidence in the record does not demonstrate that [REDACTED] committed obstruction of justice as a way to avoid or frustrate efforts by law enforcement personnel to bring her to justice for other criminal activity, or as a means to further her abuse or exploitation over the Petitioner through manipulation of the legal system. The record lacks evidence that [REDACTED] was engaged in any other criminal activity at the time, and there is no basis to

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conclude that any commission of obstruction of justice was done to avoid or frustrate any ongoing law enforcement investigation of her. The record also fails to show that [REDACTED] obstructed justice to further abuse, exploit or exert undue control over the Petitioner through the manipulation of the legal system.

Both the statute and the regulation at 8 C.F.R. § 214.14(a)(9) allow for “any similar activity” to be considered a qualifying crime when the nature and elements of a particular criminal offense are substantially similar to one of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Here, the Petitioner has not demonstrated that the criminal offenses investigated or prosecuted are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including obstruction of justice. The Petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

V. REMAINING ELIGIBILITY CRITERIA

A. Substantial Physical or Mental Abuse

As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily 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.

B. 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.

C. 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 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.

D. 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.

VI. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of J-S-Y-*, ID# 14914 (AAO Jan. 15, 2016)