



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

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

MATTER OF J-F-D-

DATE: JULY 26, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that the Petitioner had not established that he was a victim of qualifying criminal activity and consequently, had also not demonstrated the statutory criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(I)-(IV) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the record demonstrates that he was a victim of qualifying criminal activity or criminal activity that is substantially similar to one of the qualifying crimes.

Upon *de novo* review, we will dismiss the appeal.

**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

*Matter of J-F-D-*

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: . . . blackmail; . . . obstruction of justice; . . . fraud in foreign labor contracting (as defined in [18 U.S.C. § 1351]); or attempt, conspiracy, or solicitation to commit any of the above mentioned 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(b).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director’s grounds for denial.

### A. The Petitioner Is Not a Victim of Qualifying Criminal Activity

#### 1. Criminal Activity Certified as Being Detected,<sup>1</sup> Investigated, or Prosecuted

Along with the filing of the instant U petition, the Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), dated December 23, 2013, by [REDACTED] First Assistant District Attorney, [REDACTED] in [REDACTED]

---

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

*Matter of J-F-D-*

Massachusetts (certifying official). At part 3.3 of the Supplement B, the certifying official cited to chapter 266, section 30 (larceny by false pretenses); chapter 274, section 6 (attempted larceny by false pretenses); and chapter 268A, section 3(b) (accepting a gratuity) of the General Laws of Massachusetts, as the relevant criminal statutes for the criminal activities that were investigated or prosecuted. At part 3.1 of the Supplement B, the certifying official asserted that these offenses committed against the Petitioner involved or were similar to the qualifying crime of blackmail and to “conspiracy, larceny.”

On appeal, the Petitioner contends that the record establishes that he was a victim of blackmail, a qualifying crime. However, although the certifying official indicated that the Petitioner was a victim of “criminal activity involving or similar to” blackmail in part 3.1 of the Supplement B, he did not cite to the corresponding Massachusetts statute for that offense as the criminal offense that was actually investigated or prosecuted. Instead, as noted, the certifying official listed only the statutes for larceny (and attempted larceny) by false pretenses and for accepting a gratuity. Similarly, in describing the criminal activity investigated at part 3.5 of the Supplement B, the certifying official stated that the perpetrator had been charged with corrupt bribery, bribery, conspiracy to commit Massachusetts fraud, and larceny by false pretenses over \$250, but did not state that the perpetrator had also blackmailed the Petitioner. The record also includes the statement of the case from the Commonwealth of Massachusetts, which only sets forth criminal charges consistent with these offenses. The Petitioner did not provide any evidence showing that the certifying agency or another law enforcement agency actually detected, investigated, or prosecuted the qualifying offense of blackmail as having been committed against the Petitioner.<sup>2</sup> Accordingly, our *de novo* review of the record establishes that of the crimes certified are larceny by false pretenses, accepting a gratuity, bribery, and conspiracy to commit fraud.

## 2. The Certified Crimes Are Not Qualifying Crimes and Are Not Substantially Similar to a Qualifying Crime

The offenses certified as having been committed against the Petitioner are not specifically listed as 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). Thus, the nature and elements of the offenses investigated must be substantially 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.

On appeal, the Petitioner asserts that larceny by false pretenses and conspiracy to commit fraud are substantially similar to the qualifying crimes of fraud in foreign labor contracting as

---

<sup>2</sup> Although the Petitioner submitted a copy of the prosecution’s statement of the case indicating that a female victim reported being blackmailed by the perpetrator, there is nothing in the document indicating that the blackmail against the Petitioner was ever detected or investigated. Further, the statement of the case is not signed by the prosecuting attorney and there is no evidence it was filed with the criminal court.

(b)(6)

*Matter of J-F-D-*

defined under 18 U.S.C. § 1351 and obstruction of justice under chapter 268, section 13B of the General Laws of Massachusetts.

As an initial matter, with respect to the certified offense of conspiracy to commit [REDACTED] fraud, we are unable to determine from the record the corresponding criminal statute for the offense, which is required to conduct the requisite statutory analysis of the elements of the offenses. A summary of disposition in the record refers to the charge for the inchoate offense of “conspiracy” without reference to the underlying criminal offense and related statute. The unsigned statement of the case from the prosecution refers to the charge of conspiracy to commit [REDACTED] fraud, but does not provide the relevant statute for that offense. Although the Petitioner cites to the statute for accepting a bribe under chapter 268A, section 2(b) of the General Laws of Massachusetts on brief, he does not specify, and the record is not clear, that the conspiracy charge against the perpetrator related to the bribery offense. The Petitioner, therefore, has not demonstrated that conspiracy to commit [REDACTED] fraud is substantially similar to any qualifying crime.

The Petitioner has also not demonstrated that larceny by false pretenses is substantially similar to fraud in foreign labor contracting or to obstruction of justice. At the time of the offenses committed against the Petitioner in 2009 and 2011, larceny by false pretenses was defined at chapter 266, section 30 of the General Laws of Massachusetts, which provided in pertinent part:

- (1) Whoever steals, or with intent to defraud obtains by a false pretence, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another as defined in this section, . . . shall be guilty of larceny . . . .

The federal statute for fraud in foreign labor contracting under 18 U.S.C. § 1351 provided that:

Whoever knowingly and with intent to defraud recruits, solicits or hires a person outside the United States for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.

Lastly, obstruction of justice under chapter 268, section 13B of the General Laws of Massachusetts provided as follows:

- (1) Whoever, directly or indirectly, willfully
  - (a) threatens, or attempts or causes physical injury, emotional injury, economic injury or property damage to;
  - (b) conveys a gift, offer or promise of anything of value to; or
  - (c) misleads, intimidates or harasses another person who is:

(b)(6)

*Matter of J-F-D-*

(i) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;

(ii) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;

(iii) a judge, juror, grand juror, prosecutor, police officer, federal agent, investigator, defense attorney, clerk, court officer, probation officer or parole officer;

(iv) a person who is furthering a civil or criminal proceeding[.]

No elements of larceny by false pretenses are substantially similar to the offenses of fraud in foreign labor contracting or obstruction of justice. Larceny by false pretenses under chapter 266, section 30 of the General Laws of Massachusetts involves the theft of property using false pretenses. Fraud in foreign labor contracting, however, addresses fraudulent labor practices in the recruitment of individuals from outside the United States for employment in the United States. Obstruction of justice involves conduct intended to interfere or obstruct a civil or criminal proceeding through threats, gifts or promises, deception, or intimidation. In contrast to the larceny offense, neither fraud in foreign labor contracting nor obstruction of justice involves property theft.

On appeal, the Petitioner asserts that the perpetrator's underlying acts in conspiring "to defraud the [REDACTED] and to steal money" establish the statutory elements of obstruction of justice and fraud in foreign labor contracting. However, as discussed, determining whether the crime investigated or prosecuted is substantially similar to one of the enumerated offenses under the Act does not involve a factual inquiry into the underlying criminal acts, and instead, strictly entails a comparison of the nature and elements of the non-qualifying crime investigated and a qualifying crime. *See* 8 C.F.R. § 214.14(a)(9). Here, this statutory analysis does not demonstrate that the nature and elements of the criminal activities investigated, larceny by false pretenses and conspiracy to commit [REDACTED] fraud, are substantially similar to the qualifying crimes of obstruction of justice and fraud in foreign labor contracting. As such, the Petitioner has not demonstrated that he is a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### B. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he necessarily has also not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or 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.

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 necessarily 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.

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.

III. CONCLUSION

The Petitioner has not demonstrated that he was a victim of one of the qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. He, therefore, necessarily cannot satisfy 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. *See* section 291 of the Act, 8 U.S.C. § 1361; *see also 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-F-D-*, ID# 17070 (AAO July 26, 2016)