



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

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

MATTER OF U-G-E-

DATE: JUNE 24, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 petition. The Director concluded that the Petitioner had not established that he was the victim of qualifying criminal activity, suffered substantial abuse as a result of the victimization, possessed information concerning qualifying criminal activity, was helpful in the investigation or prosecution of qualifying criminal activity, and that qualifying activity occurred in the United States. We dismissed the Petitioner's subsequent appeal. We concluded that the record neither established that the Petitioner was the victim of qualifying criminal activity, nor that he met the remaining eligibility criteria.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. He claims that we erroneously required that he establish his eligibility by a preponderance of the evidence, and that he meets all of the eligibility criteria under the more expansive standard of proof applicable in this case, "any credible evidence." The Petitioner claims that he is a victim of qualifying criminal activity because the certified crimes, fraud and the unauthorized practice of law, are substantially similar to the qualifying crime of obstruction of justice.

Upon review, we will deny the motion.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, entered the United States without inspection, admission, or parole. He subsequently filed the Form I-918, Petition for U Nonimmigrant Status, and Form I-918 Supplement B, U Nonimmigrant Status Certification, claiming that he was the victim of a fraudulent immigration scheme, and assisted in the investigation and prosecution of the criminal activity. The Form I-918 Supplement B indicates that the Petitioner was the victim of fraud, the criminal activity investigated or prosecuted was the unlawful practice of law and fraud, and the Petitioner suffered financial loss as a result of the criminal activity. The Director determined that the certified crimes were neither qualifying criminal activity nor substantially similar to qualifying criminal activity, and that the Petitioner did not meet the remaining eligibility criteria, which are based on a threshold finding of qualifying criminal activity. On appeal, the Petitioner claimed that the criminal activity was substantially similar to the qualifying crime of obstruction of justice. In our decision dismissing the appeal, which we incorporate here, we affirmed the Director's decision. We concluded that the certified criminal activities, the unlawful practice of law and fraud, were not substantially similar to any qualifying criminal activity, and that the Petitioner did not meet the remaining eligibility criteria. The Petitioner timely filed the motion to reconsider.

III. ANALYSIS

Based on the evidence in the record, as supplemented on motion, the Petitioner has not overcome our previous decision.

A. The Correct Burden of Proof Is Preponderance of the Evidence

On motion, the Petitioner asserts that we must weigh the evidence under the "any credible evidence" standard, and that when we apply the correct burden of proof, he meets the eligibility criteria. Section 214(p)(4) of the Act provides:

In acting on any petition filed under this subsection, the consular office or [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(4), provides, in part:

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 USCIS.

While the Petitioner is correct that we must consider any credible evidence relevant to the petition, the evidentiary requirement is not equivalent to the Petitioner's burden of proof. *See* 8 C.F.R. § 214.14(c)(4). Under *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), a precedent decision, the burden of proof in administrative immigration proceedings is on a petitioner to demonstrate eligibility by a preponderance of the evidence, except as otherwise provided. Here, the statutory and regulatory

requirement that we consider any credible evidence when adjudicating U visa petitions does not modify the Petitioner's burden of establishing his eligibility by a preponderance of the evidence.

The Petitioner contends that any credible evidence is a recognized evidentiary standard of the Environmental Protection Agency (EPA). The Petitioner does not explain how the EPA's adoption of the Credible Evidence Rule, 62 Fed. Reg. 8314 (February 24, 1997), which allows citizens to use any credible evidence when filing a lawsuit, is relevant in these proceedings. Nor does he show that the EPA's rule allowing any credible evidence to be submitted in a lawsuit usurps the citizen complainant's burden of proof in lawsuits involving the EPA.

B. The Certified Criminal Activity Is Not Substantially Similar to Qualifying Criminal Activity

The certifying official identified fraud and the unauthorized practice of law, specifically Oklahoma Statutes Annotated title 21 section 1541.2 (false statements or pretenses, loss greater than \$500.00), and 8 C.F.R. § 292.2 (organizations and accredited representatives), as the crimes certified on the Form I-918 Supplement B, neither of which are 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 these offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

In our previous decision, we reviewed the specific statutes cited by the certifying official on the Form I-918 Supplement B, and determined that no elements of Okla. Stat. Ann. tit. 21, section 1541.2 were similar to obstruction of justice under 18 U.S.C. § 1505. We concluded that the Oklahoma statute investigated in this case, Okla. Stat. Ann. tit. 21 § 1541.2 (West 2011), involved cheating, defrauding, or obtaining property through the use of trick or deception, or false representation, and did not involve willfully withholding, misrepresenting, altering, or by other means falsifying any information in a government proceeding or the use of threats or force – essential elements in the federal obstruction of justice statute under 18 U.S.C. § 1505. We further indicated that 8 C.F.R. § 292.2 is not a criminal statute but a regulation setting forth procedures under which individuals and organizations may become authorized to represent foreign nationals in immigration proceedings before USCIS, and was neither a qualifying criminal activity nor substantially similar to a qualifying criminal activity.

On motion, the Petitioner contends that the immigration fraud scheme perpetrated against him and others is substantially similar to obstruction of justice, in that the perpetrator was obstructing the administrative processes of USCIS through the unauthorized practice of law and deceit of the immigrant community for personal gain. As we noted in our previous decision, the certifying official did not indicate on the Form I-918 Supplement B that obstruction of justice was investigated or prosecuted, but rather listed the offense investigated in Part 3 as "other: fraud." We do not look at the underlying facts of the proceedings to determine whether such acts constitute obstruction of

justice or other qualifying activity, but at whether the certified crime or crimes are qualifying crimes or substantially similar to qualifying criminal activity.

The Petitioner asserts that we should consider the evidence under an expansive burden of proof and interpret the statutory list of qualifying crimes broadly as general categories of criminal behavior. The Petitioner contends that protecting vulnerable aliens from immigration scams is exactly the kind of criminal behavior that the U nonimmigrant classification was designed to address, and that Congress intended to encourage undocumented persons in the United States who are the victims of crime, like himself, to report crime and to cooperate with law enforcement in the investigation and prosecution of crime. The Petitioner claims that we erroneously interpreted the statute by applying the more rigorous preponderance of the evidence standard. The Petitioner does not submit precedent decisions or USCIS policy in support of his assertions. Although he has submitted credible evidence that he was a victim of immigration fraud, the preponderance of the evidence does not show that the certified criminal offenses are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

The Petitioner has, therefore, not established that he is the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. The Petitioner Has Not Suffered Substantial Abuse Resulting from Qualifying Criminal Activity

As the Petitioner does 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.

D. The Petitioner Does Not Possess Information Concerning Qualifying Criminal Activity

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

E. The Petitioner Has Not Been Helpful to Authorities Investigating Qualifying Criminal Activity

As the Petitioner does 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.

F. Qualifying Criminal Activity Did Not Occur within the Jurisdiction of the United States

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that 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, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

The Petitioner does not cite to precedent decisions to establish that our prior decision was based on an incorrect application of law or USCIS policy and does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. *See* 8 C.F.R. § 103.5(a)(4).

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 motion to reconsider is denied.

Cite as *Matter of U-G-E-*, ID# 16853 (AAO June 24, 2016)