



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

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

MATTER OF R-F-C-

DATE: NOV. 9, 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 petition. The Director concluded that the Petitioner had not established that he was a victim of qualifying criminal activity and thus not demonstrated the statutory criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(I)-(IV) of the Act. The Director also specifically noted that the Petitioner had not established that he suffered resultant substantial physical or mental abuse.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and claims that the record demonstrates that he was a victim of the qualifying crimes of extortion, blackmail, and witness tampering; that he suffered substantial physical and mental abuse as a result; and that he satisfied the remaining eligibility criteria for U nonimmigrant classification.

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 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; . . . extortion; . . . witness tempering; . . . 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 term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

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. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who represents that he entered the United States in 1994, subsequently departed, and then returned in March 2002 without being inspected, admitted, or paroled.¹ In 2008 and 2009 the Petitioner was the victim of theft by extortion involving a perpetrator falsely representing himself as an immigration attorney. Based on his victimization, the Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (U petition), with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), and a waiver application. The Director issued a request for evidence (RFE) to establish that a qualifying crime was investigated or prosecuted and that the Petitioner suffered substantial physical or mental abuse as a result of a qualifying criminal activity. The Petitioner responded to the RFE and the Director denied the U petition. The Director determined that evidence demonstrated the Petitioner had suffered financial loss through fraud and theft, not through the criminal activities of blackmail and extortion, and that monetary loss associated with criminal activity is not substantial physical or mental abuse. The Petitioner subsequently filed a motion to reopen and reconsider, and the Director affirmed the denial of the U petition determining that the crime of theft by extortion was not substantially similar to a qualifying criminal activity and that the Petitioner's monetary loss and fear of deportation was not recognized as substantial physical or mental abuse.

III. ANALYSIS

We will withdraw the Director's conclusion that the Petitioner was not the victim of qualifying criminal activity. His U petition, however, remains unapprovable because he has not demonstrated that he suffered resultant substantial physical or mental abuse.

A. Victim of Qualifying Criminal Activity

1. Criminal Activity Certified as Being Detected,² Investigated, or Prosecuted

The Petitioner submitted a Supplement B, signed October 19, 2012, by [REDACTED] deputy district attorney, [REDACTED] Oregon, District Attorney's Office (certifying official). At part 3.3 of the Supplement B, the certifying official cited to sections 164.055, 164.057, and 164.075 of the Oregon Revised Statutes, corresponding to the offenses of theft in the first degree, aggravated theft in the first degree, and theft by extortion, respectively, as the criminal activities that were investigated or prosecuted. At part 3.1, the certifying official asserted that these criminal activities committed against the Petitioner involved or are similar to the qualifying crimes of blackmail,

¹ On the Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), the Petitioner indicates that he entered the United States unlawfully, was unlawfully present for more than one year before departing, and then reentered without inspection.

² 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).

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extortion, and an attempt to commit the named crimes. At part 3.5, which asks for a brief description of the criminal activity investigated, the certifying official stated that a suspect falsely represented himself as an immigration attorney and extorted approximately \$8,000 from the victim and that “[t]hreats to notify law enforcement and have the victim deported kept the victim from reporting the incident.” The certifying official also stated that similar activity had involved about 60 other victims. A January 28, 2014, letter from a police detective for the [REDACTED] Oregon, indicated that the Petitioner appeared to be the victim of theft by extortion under Oregon Revised Statute section 164.075. A May 6, 2014, letter from an assistant United States attorney for the District of Oregon indicated that the office was investigating allegations that included witness tampering under 18 U.S.C. § 1512 and blackmail under 18 U.S.C. § 873.

On appeal, the Petitioner contends that he was victim of the qualifying crimes of extortion and blackmail. The Petitioner further asserts that although the certifying official did not explicitly indicate witness tampering as a crime on the Supplement B, the certification form and the letter from the U.S. attorney confirm he was also victim of witness tampering. However, the certifying official and police detective only cite Oregon statutes for theft as having been detected and investigated.

All three of the statutes indicated at part 3.3 of Supplement B concern the crime of theft under Oregon law. However, Or. Rev. Stat. section 164.075 specifically criminalizes theft by extortion and provides:

164.075. Theft by extortion

- (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;
 - (f) Cause or continue a strike, boycott or other collective action injurious to some person’s business, except that such conduct is not considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
 - (g) Testify or provide information or withhold testimony or information with respect to another’s legal claim or defense;
 - (h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
 - (i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony.

Or. Rev. Stat. § 164.075 (West 2008).

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 evidence in the record of proceedings did not establish that the elements of the criminal activity investigated are substantially similar to that of crimes that fall under the guidelines for U nonimmigrant statuses. The Act does not specify what general types of crimes may be considered qualifying, but instead provides a specific list of offenses including extortion and blackmail, 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. Nothing in the record of proceedings contradicts the certifying official’s certification of the offense detected and investigated as extortion. In addition, the Petitioner submitted a personal affidavit explaining how he was the victim of extortion, and the letter from the police detective indicated that the Petitioner appeared to be the victim of theft by extortion. Consequently, the record as a whole sufficiently demonstrates that the Petitioner was a victim of the qualifying criminal activity of extortion. The Director’s determination to the contrary is withdrawn.³

B. Substantial Physical or Mental Abuse Has Not Been Established

A determination that a petitioner has been the victim of qualifying criminal activity does not necessitate a finding of resultant substantial physical or mental abuse. Because each of the four statutory criteria presumes that qualifying criminal activity has occurred, a petitioner is required to separately establish each individual element of section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)-(IV) of the Act. To hold otherwise would make the four separate and distinct statutory criteria meaningless.

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. 8 C.F.R. § 214.14(b)(1).

³ On appeal the Petitioner contends that he was also the victim of witness tampering and blackmail and the letter from the assistant U.S. district attorney indicates that there was an ongoing criminal investigation that included allegations of witness tampering and blackmail, both of which constitute qualifying criminal activity. As we determined that the Petitioner was a victim of extortion, a qualifying criminal activity, we will not further address these crimes.

Part 3.6 of the Supplement B, which asks for a description of any known injury to the victim, is blank. At part 3.5, it states that the Petitioner was extorted out of approximately \$8,000. The letter from the police detective stated that the Petitioner reported paying \$8,000 for services the perpetrator was not legally allowed to do or could not do, and that victims had been threatened that if they called police the suspects would contact immigration authorities to have them deported.

In his declaration, the Petitioner stated that he was threatened, intimidated, and extorted, and as a result has been harmed economically causing emotional harm that has affected his relationships with friends and family, and that he feels shame and humiliation. He described the circumstances that led to his victimization, and stated that he had been threatened with being reported to immigration authorities and worries about his family because the perpetrators have their personal information and could harm them for revenge. The Petitioner stated that he borrowed money from family and repaying it has caused him to go without basic necessities, to be late on bills, and to worry about food and rent. He asserted that he and his spouse now argue about money, and that their daughter notices the problems so he fears it affects her emotional development. The Petitioner maintained that his daughter has medical problems and that if he leaves the country he will not be able to care for her. He also stated that he fears going to Mexico where there are no jobs and no future, but where there is violence and corruption.

A declaration from the Petitioner's spouse stated that the family was affected emotionally as the Petitioner felt guilt and lost pleasure in life and his family, and that they lost communication in their relationship. She stated that the Petitioner became unable to concentrate, which caused issues at work and in everyday life.

A letter from a mental health therapist, dated February 25, 2014, stated that due to his victimization the Petitioner has an increase in anxiety, shame, and depression, that he has difficulty trusting others, and that the psychological toll is critical with long-lasting impact on his well-being. The letter described the Petitioner's report of events that occurred to him and how he fears for his safety. It further noted the medical condition of the Petitioner's daughter and the Petitioner's practical and financial struggle to provide care. The therapist surmised that the Petitioner is psychologically fragile, and the trauma of being a crime victim has caused constant worry and anxiety; stress eating; difficulty sleeping and concentrating; nightmares; and isolation. The therapist concluded that the Petitioner meets the criteria for Post-Traumatic Stress Disorder (PTSD), anxiety disorder NOS, and major depressive disorder, recurrent. The therapist recommended counseling and suggested that untreated symptoms could lead to a severe mental health crisis.

The preponderance of the relevant evidence does not show that the Petitioner suffered substantial physical or mental abuse under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). Neither the Petitioner nor the certifying agency provided any evidence that the Petitioner suffered a serious physical injury.

Regarding substantial mental abuse, the Petitioner contends on appeal that the Director reduces his suffering to being a victim of theft and a generalized fear of deportation, and did not consider evidence that he and his spouse took implicit threats seriously. The Petitioner further contends that the Director did not give adequate weight to his and his spouse's declarations about their anxiety and deprivation after becoming victim of crimes, or the mental health evaluation about the long-term harm. However, the Petitioner's declaration provides few details about the continued impact of the criminal activity on his mental health and daily life. Although the criminal activity occurred in 2008 and 2009, the Petitioner's health assessment did not occur until February 2014, nearly five years later; he attended only one therapy session, and there is no information about the Petitioner's long-term prognosis or treatment plan requirements. The therapist concluded that the Petitioner met the criteria for PTSD, anxiety and depression, but also provided little detail of the continued effect on the Petitioner's daily life or his ability to otherwise function. The declaration from the Petitioner's spouse stated generally that the Petitioner became unable to concentrate, affecting his work and everyday life, but the statement provides no further detail.

The declarations and the mental health evaluation do not contain sufficient detail about the mental harm suffered by the Petitioner to show how the criminal activity has impacted and continues to impact his daily life and overall well-being. The evidence does not demonstrate that the criminal activity perpetrated against him caused serious harm to his physical or mental soundness. Consequently, as the record is presently constituted, 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

Although the Petitioner has 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 has not shown that he has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described.

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 R-F-C-*, ID# 12472 (AAO Nov. 9, 2016)