



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

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

MATTER OF V-D-

DATE: OCT. 12, 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), concluding that the Petitioner did not establish that he suffered substantial abuse as the result of having been the victim of qualifying criminal activity.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. He asserts on appeal that he was the victim of blackmail, witness tampering, abduction, extortion, torture, involuntary servitude, peonage, forced labor, and trafficking, and that he suffered substantial physical and mental abuse as a result.

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

I. 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

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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: . . . torture; trafficking; . . . being held hostage; peonage; involuntary servitude; . . . kidnapping; . . . blackmail; extortion; . . . witness tampering; . . . obstruction of justice; perjury; 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 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

The Petitioner filed the instant U petition on September 30, 2014. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director’s grounds for denial.

A. Victim of Qualifying Criminal Activity

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

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), dated August 27, 2014, signed by [REDACTED] Assistant U.S. Attorney, United States Attorney’s Office, [REDACTED] California (certifying official). At part 3.3 of the Supplement B,

¹ 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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the certifying official cited 18 U.S.C. §§ 371 (conspiracy to commit offense or to defraud the United States), 1341 (fraud), 1343 (fraud by wire, radio, or television), 1546(a) (fraud and misuse of visas, permits, and other documents), 1001(a)(2)-(3) (false or fraudulent statements, representations, writings, or documents), 1030(a) (fraud and related activity in connection with computers), and 1957 (engaging in monetary transactions in property derived from specified unlawful activity) as the statutory citations for the criminal activity that was investigated or prosecuted. The certifying official also listed a statutory citation for 18 U.S.C. § 1324(a)(1), which does not exist. Other evidence in the record indicates that the certifying official intended to list 8 U.S.C. § 1324(a)(1) (bringing in and harboring certain aliens).² At part 3.1 of the Supplement B, the certifying official checked "Other" as the criminal activity of which the Petitioner was a victim.

At part 3.5 of the Supplement B, the certifying official indicated that the above-listed crimes were investigated in relation to a scheme in which S-S-³ established a fraudulent university in order to fraudulently obtain student visas for foreign nationals. S-S- then defrauded those foreign nationals by collecting payment for tuition and fees in exchange for maintaining their student visa status. At part 3.6 of the Supplement B, the certifying official stated that S-S- "illegally harbored [the Petitioner] . . . to carry out parts of her scheme" by employing him, and that he suffered "financial losses in the form of lost tuition payments, underpayment of wages, lost opportunity to attend a bona fide school, and possible non-economic harm resulting from his status as an alien harboree." The certifying official also noted that S-S- threatened students with deportation if they did not pay tuition, and that the Petitioner "accepted responsibility for his minor role in accessing a government database" at the direction of S-S-.⁴

The Petitioner contends that he was a victim of blackmail, witness tampering, abduction, extortion, torture, involuntary servitude, peonage, forced labor, and trafficking. With the exception of forced labor, all of the crimes the Petitioner alleges are qualifying crimes. However, none of the crimes of which the Petitioner alleges he was a victim were certified on the Supplement B. The certifying official checked "Other" as the crime as the criminal activity of which the Petitioner was a victim and provided statutory citations for several crimes that are not enumerated at section 101(a)(15)(U)(iii) of the Act as qualifying crimes.

On appeal, the Petitioner submits a new Supplement B, dated May 2, 2016, signed by [REDACTED] Assistant U.S. Attorney, United States Attorney's Office, [REDACTED] California. However, the Petitioner's filing of a Supplement B on appeal does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i), requiring the Supplement B to be filed as initial evidence when the U petition was filed and to be executed "within the six months immediately preceding the filing of Form I-918."

² At part 3.6 of the Supplement B, the certifying official stated that the Petitioner was an "alien harboree." Additionally, the record of proceedings contains an indictment which lists alien harboring under 8 U.S.C. § 1324(a)(1)(A) as one of the violations committed by the perpetrator of the crimes against the Petitioner.

³ Name withheld to protect the individual's identity.

⁴ The Petitioner was convicted of conspiracy to commit unauthorized access of a government computer, in violation of 18 U.S.C. § 371, in connection with his employment with S-S-.

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Furthermore, even if we could disregard the regulatory requirements, the new Supplement B does not establish the Petitioner's eligibility. Although [REDACTED] indicated at part 3.1 of the new Supplement B that the Petitioner was a victim of "criminal activity involving or similar to" trafficking, related crimes, and conspiracy to commit any of the named qualifying crimes, he did not cite to a corresponding statute for those offenses in part 3.3 as the criminal offenses that were actually investigated or prosecuted. The certifying official's completion of part 3.1 of the Supplement B is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Rather, it is part 3.3 which establishes the crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner's victimization. The purpose of part 3.1 is only to identify the general category of criminal activity to which the offense(s) in part 3.3 may relate. See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations).

Additionally, the indictment against S-S- lists the same statutory citations as those listed on the Supplement B, as well as 18 U.S.C. §§ 2 (aiding and abetting), 982(a)(6)(A)(ii) (visa fraud forfeiture), 982(a)(1) (money laundering forfeiture), and 981(a)(1)(C) and 28 U.S.C. § 2461(c) (mail fraud, wire fraud, and alien harboring forfeiture).⁵ Accordingly, our *de novo* review of the record establishes that the crimes certified are those for which statutory citations were provided on the first Supplement B: conspiracy to commit offense or to defraud the United States; fraud; fraud by wire, radio, or television; fraud and misuse of visas, permits, and other documents; false or fraudulent statements, representations, writings, or documents; fraud and related activity in connection with computers; engaging in monetary transactions in property derived from specified unlawful activity; and bringing in and harboring certain aliens.

2. The Petitioner was not the Victim of Qualifying Criminal Activity

The Petitioner has not established that any of the crimes which were detected, investigated, or prosecuted as committed against him were qualifying crimes specifically listed 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." Thus, the nature and elements of the offense(s) 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.

⁵ Although we give a properly executed Supplement B significant weight, it is not the only evidence that we may consider when determining whether qualifying criminal activity occurred during the commission of, or is substantially similar to, the certified offense(s) in part 3.3. See section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

In his submissions below and on appeal, the Petitioner does not assert that conspiracy to commit offense or to defraud the United States; fraud; fraud by wire, radio, or television; fraud and misuse of visas, permits, and other documents; false or fraudulent statements, representations, writings, or documents; fraud and related activity in connection with computers; or engaging in monetary transactions in property derived from specified unlawful activity, as cited on the Supplement B, are substantially similar to any qualifying crime enumerated at section 101(a)(15)(U)(iii) of the Act. Instead, he asserts that he is the victim of blackmail, witness tampering, abduction, extortion, torture, involuntary servitude, peonage, forced labor, and trafficking. Of the crimes the Petitioner lists, none were certified on the Supplement B as having been detected, investigated, or prosecuted for having been committed against the Petitioner. The Petitioner describes his experiences with S-S- and asserts that this establishes that he was the victim of the crimes he lists, but a qualifying crime or “any similar activity” must be certified on the Supplement B. Section 214(p)(1) of the Act. Accordingly, the Petitioner has not established that he is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act.

B. Substantial Physical or Mental Abuse

On appeal, the Petitioner asserts that he suffered substantial physical and mental abuse as a result of having been a victim of blackmail, witness tampering, abduction, extortion, torture, involuntary servitude, peonage, forced labor, and trafficking. However, as the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he also has 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. We, therefore, do not engage in further review of the Director’s determination on this issue.

III. CONCLUSION

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 appeal is dismissed.

Cite as *Matter of V-D-*, ID# 8462 (AAO Oct. 12, 2016)