



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

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

MATTER OF F-V-V-

DATE: OCT. 14, 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, initially approved the Form I-918, Petition for U Nonimmigrant Status (U petition), and after providing notice to the Petitioner, subsequently revoked the approval.<sup>1</sup> The Director concluded that the Petitioner did not establish that he has been a victim as he did not demonstrate the requisite qualifying criminal activity and that he suffered substantial physical or mental abuse as a result of the criminal activity.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and claims that U.S. Citizenship and Immigration Services (USCIS) incorrectly applied the law in revoking the approval of his U petition and did not properly consider additional evidence that he submitted in response to the notice of intent to revoke (NOIR).

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);

---

<sup>1</sup> In the revocation letter, the Director notified the Petitioner “[t]he revocation of this [U] petition also revokes any waiver of inadmissibility granted in conjunction with the petition, pursuant to 8 CFR 214.14(h)(4).”

- (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[.]

Extortion is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act, which also provides that a qualifying criminal activity involves the specifically listed crimes “or any similar activity in violation of Federal, State, or local criminal law . . . .” 8 U.S.C. § 1101(a)(15)(U).

The eligibility requirements for U nonimmigrant classification are explained in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

- (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . .
  - (1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on 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. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level . . . .

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 (AAO 2010). A petitioner may submit any

*Matter of F-V-V-*

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

### A. Certified Criminal Activity

Deputy District Attorney [REDACTED] District Attorney's Office in Oregon (certifying official), signed the Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) on March 28, 2012. On the Supplement B, the certifying official listed the criminal activities of which the Petitioner was a victim at part 3.1 as involving or being similar to blackmail, extortion, and witness tampering. The certifying official also listed the Petitioner as a victim of "Other: theft" and attempt to commit any of the aforementioned offenses. In part 3.3, the certifying official referred to sections 164.055 (theft in the first degree), 164.057 (aggravated theft in the first degree), and 164.075 (theft by extortion) of the Oregon Revised Statutes<sup>2</sup> as the criminal activities that were actually investigated or prosecuted.<sup>3</sup> At part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official indicated the Petitioner was the victim of individuals who "falsely represented themselves as Immigration Attorney/Accredited Reps and as a result extorted over \$250,000.00 in fees from approximately 50 victims seeking immigration assistance. Threats to notify law enforcement and have the victims deported have kept many victims from seeking help . . . ."

In his response to the NOIR, the Petitioner provided a letter from the office of the U.S. Attorney for the District of Oregon (Oregon District), stating that it was conducting an ongoing criminal investigation in conjunction with the Federal Bureau of Investigation for potential violations of federal law under 18 U.S.C., including blackmail, money laundering, wire fraud, and witness tampering as "[t]here are numerous victims who have come forward . . . ." The Director found that the Petitioner did not establish he was a victim because the Oregon District was not the certifying official, and the crimes it listed were not certified on the Form I-918 Supplement B. Although the Director correctly concluded that the Oregon District was not the certifying official and the crimes certified on the Form I-918 Supplement B were not those identified by the Oregon District, the Director does not indicate why the Form I-918 Supplement B is otherwise deficient.

Our *de novo* review indicates that the certifying official's office and the Oregon District have conducted independent investigations for possible violations of state and federal laws for which the Petitioner was a victim. The certifying official has identified the criminal activity that has been investigated and the certification is supported by a letter from the [REDACTED] Police

---

<sup>2</sup> Although the Petitioner claims he was a victim of blackmail, the Supplement B did not provide a statutory citation to this offense in part 3.3 as a crime that was actually investigated or prosecuted.

<sup>3</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).

Department, which specifically references the Petitioner and indicates that the department was involved in an ongoing investigation of the certified criminal activity.

1. "Theft by Extortion" Under the Oregon Revised Statutes is Qualifying Criminal Activity

On appeal, the Petitioner asserts USCIS did not provide any discussion or explanation for its conclusion that the certified crime, theft by extortion, "is not the same as, or substantially similar to, the qualifying criminal activity of [e]xtortion [under the Act.]"

Our *de novo* review of the revocation decision reflects that the Director examined evidence the Petitioner submitted in response to the NOIR, including an Oregon case, *State v. Robertson*, 649 P.2d 569 (Or. 1982). In so doing, the Director concluded that *Robertson* involved the offense of coercion as defined in section 163.275(1)(e) of the Oregon Revised Statutes, an offense the Director determined was neither a qualifying crime under the Act, nor criminal activity listed by the certifying official on the Supplement B. The Director, however, did not include any further analysis or discussion of the crimes that the certifying official listed on the Supplement B as they related to the statutorily enumerated crimes.

As discussed above, "Theft by Extortion" under section 164.075 of the Oregon Revised Statutes, was certified on the Supplement B. At the time of the offense this provision stated:

- (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;
  - ....
  - (i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony.<sup>4</sup>

Or. Rev. Stat. Ann. § 164.075 (West 2011).

Based on the foregoing, the Petitioner has demonstrated that he was the victim of extortion, which is specifically enumerated as a qualifying crime under section 101(a)(15)(U)(iii) of the Act. We, therefore, withdraw the portion of the Director's revocation that finds otherwise.<sup>5</sup>

## 2. Substantial Physical or Mental Abuse

On appeal, the Petitioner reiterates general statements that he made in a declaration submitted with the U petition in regard to the harm he has suffered as a victim of qualifying criminal activity. The Petitioner generally states that the harm is not solely financial because he fears retaliation by the perpetrators of the crimes for which he was a victim, and he has suffered from anxiety, depression, and distrust of other individuals. He also indicates that he has trouble sleeping and did not have a fear of removal from the United States until the perpetrators made such threats. In his declaration, he further relayed that he made cash payments totaling \$6,500 to the perpetrators and, at their instigation, quit his job in Louisiana and moved to Oregon, where he has "not been able to find stable work[.]" He also feared reporting them "because they made it known that they could have us [the victims] deported . . . ."

Although the Petitioner described the facts of the crime and provided a general description of how the criminal activity has impacted his daily life, interactions with others, and his overall wellbeing, he does not provide specific details and does not otherwise explain the degree to which the qualifying criminal activity aggravated any preexisting conditions. 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of preexisting conditions). In addition, while he has expressed difficulty in finding stable employment since moving to Oregon, he has not provided sufficient evidence that his mental health problems have prevented him from working, caring for his family, and meeting his other responsibilities. Accordingly, the Petitioner has not satisfied section 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial abuse resulting from qualifying criminal activity.

---

<sup>4</sup> We note that extortion is not solely pecuniary in nature as it involves threats of force or inducement through fear.

<sup>5</sup> As the Petitioner has established that he is a victim of extortion, we need not further determine whether he also is a victim of the qualifying criminal activities of blackmail and witness tampering as defined in Oregon law.

**B. Remaining Eligibility Requirements**

As the Petitioner has not established his eligibility under section 101(a)(15)(U)(i)(I) of the Act, he thereby cannot demonstrate that he meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act. Accordingly, the Petitioner has not overcome the grounds for revocation and the approval of the U petition remains revoked pursuant to 8 C.F.R. § 214.14(h)(2)(i)(B) (approval of U petition made in error).

**III. CONCLUSION**

In these proceedings, the Petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The portion of the Director's decision finding that the Petitioner did not establish the requisite qualifying criminal activity is withdrawn. However, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of the qualifying criminal activity and that he meets the remaining eligibility criteria. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-V-V-*, ID# 10639 (AAO Oct. 14, 2016)