



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

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

MATTER OF G-G-J-B-

DATE: OCT. 27, 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, revoked approval of the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that the U petition was approved in error because the Petitioner did not establish that he suffered substantial abuse as a 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 that the Director erred in finding that the Petitioner was not the victim of qualifying criminal activity. He also asserts that he suffered substantial mental abuse as a result of qualifying criminal activity.

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 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 tampering; . . . 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 regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

- (h) *Revocation of approved petitions for U nonimmigrant status* –

....

- (2) *Revocation on notice.*

- (i) [U.S. Citizenship and Immigration Services (USCIS)] may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

....

- (B) Approval of the petition was in error . . . .

- (ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status.

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

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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 Director approved the Petitioner's U petition but then subsequently issued a notice of intent to revoke (NOIR) to which the Petitioner responded with a brief and additional evidence. The Director subsequently revoked approval of the U petition. Upon a full review of the record, as supplemented on appeal, the Petitioner has overcome some, but not all, of the Director's grounds for revocation.

### A. Victim of Qualifying Criminal Activity

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

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed by [REDACTED] Deputy District Attorney, [REDACTED] Attorney's Office, [REDACTED] Oregon (certifying official). At part 3.3 of the Supplement B, the certifying official cited Or. Rev. Stat. sections 164.055 (theft in the first degree), 164.057 (aggravated theft in the first degree), and 164.075 (theft by extortion) as the statutory citations for the criminal activity that was investigated or prosecuted. At part 3.1 of the Supplement B, the certifying official checked blackmail, extortion, witness tampering, theft, and attempt to commit any of the named crimes as the criminal activity of which the Petitioner was a victim. At part 3.5, the certifying official indicated that the suspects falsely represented themselves as immigration attorneys and extorted fees from numerous victims. At part 4.5 of the Supplement B, the certifying official stated that the Petitioner reported the crime, provided a statement and evidence to law enforcement, and cooperated with an agent of the Federal Bureau of Investigation.

#### 2. The Petitioner was the Victim of Qualifying Criminal Activity

The Director determined that the Petitioner was not the victim of qualifying criminal activity because the certifying official indicated in the Supplement B that the investigation was ongoing and that the Petitioner was identified as a "possible victim." However, 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). The Supplement B clearly indicates that qualifying crimes were detected as having been committed against the Petitioner. Section 101(a)(15)(U)(i) of the Act does not require that an investigation be completed for a petitioner to be identified as the victim of a qualifying crime.

The Director also found that the Petitioner was not a victim of qualifying criminal activity because the crime of which he was a victim was financial in nature. The Supplement B establishes that the Petitioner was the victim of extortion, a qualifying crime. Or. Rev. Stat. section 164.075 specifically criminalizes theft by extortion and provides:

(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.

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 Act does not specify what general types of crimes may be considered qualifying, but instead provides a specific list, including extortion, blackmail, and embezzlement, which often involve economic loss, as qualifying crimes. Here, the certifying official stated that the Petitioner was the victim of blackmail and extortion, among other crimes, and listed Oregon’s only extortion provision as one of the crimes investigated or prosecuted. The Petitioner also provided a personal statement in which he described how he was the victim of the qualifying crime of extortion. There is no evidence in the record that the Petitioner was not the victim of extortion.

The Director also found that the Petitioner willingly met with the perpetrators of the crime against him, and that the evidence did not establish that the perpetrators forced the Petitioner to do something against his will through a threat of violence or property damage. Therefore, the Director determined that the crime against the Petitioner did not qualify as extortion. However, theft by extortion under Or. Rev. Stat. section 164.075 also criminalizes obtaining property from another by threats other than violence or property damage, such as “engag[ing] in other conduct constituting a crime,” “expos[ing] a secret,” or “inflict[ing] any other harm . . . .” Similarly, extortion under 18 U.S.C. § 1951(b)(2) includes obtaining property from another through the use of fear. The evidence indicates that the perpetrators obtained thousands of dollars from the Petitioner by instilling fear of retribution if he did not comply with their instructions. Accordingly, the Petitioner has

(b)(6)

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demonstrated that he was the victim of extortion,<sup>1</sup> a qualifying crime listed at subsection 101(a)(15)(U)(iii) of the Act. The Director's determination to the contrary will be withdrawn.

#### B. Substantial Physical or Mental Abuse

Nevertheless, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of having been the victim of a qualifying crime. The Director found that the Petitioner suffered only financial losses. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, we consider, 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. *See* 8 C.F.R. § 214.14(b)(1).

At part 3.6 of the Supplement B, which asks for a description of any known or documented injury to the Petitioner, the certifying official left the space blank. In his personal statement submitted below, the Petitioner stated that he paid \$6,950 to the perpetrators of the extortion, J-V- and P-S-;<sup>2</sup> in the belief that they would help him obtain legal permanent residence. The Petitioner indicated that he felt "disappointment, embarrassed, worried and very depressed" as a result of the crime against him. He indicated that he lost trust in others and feared that J-V- and P-S- would take revenge against him or his family for reporting the crime to law enforcement officials. He noted that J-V- mentioned that P-S- would have another family deported for filing a report with the police. The Petitioner also stated that he lost his family's life savings on fees paid to J-V- and P-S-.

In a second personal statement, the Petitioner indicated that during his interactions with J-V- and P-S-, he began to fear that they would cause problems for him if he did not do as they asked. The Petitioner stated that J-V- told him that P-S- is a powerful person who could cause problems for immigrants and their families, and that he had a gun and was "not to be provoked." The Petitioner noted that he feared for the safety of his young children and became afraid of loud noises at night, believing that P-S- would come to his house with a gun. The Petitioner stated that he continues to fear that the perpetrators will seek revenge against him and his family, and noted that he continues to see J-V- on a regular basis at church. He stated that he became depressed and that the symptoms affected him emotionally and physically.

The Petitioner submitted a psychological evaluation from [REDACTED] Ph.D., who reported that the Petitioner was anxious, stressed, and overwhelmed by his emotions. [REDACTED] stated that the depression and trauma resulting from his experience with J-V- and P-S- "has had a serious and profound impact on his self-esteem and self-worth," and that the Petitioner suffered from symptoms

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<sup>1</sup> The Petitioner also asserts that he was the victim of blackmail and witness tampering. However, because he has established that he was the victim of the qualifying crime of extortion, we will not reach the issue of whether he was also the victim of other qualifying crimes.

<sup>2</sup> This decision uses initials to protect the identities of the individuals.

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of depression and anxiety. [REDACTED] diagnosed the Petitioner with post-traumatic stress disorder and generalized anxiety disorder, and concluded that the Petitioner was at risk of a “physically debilitating health problem caused by extraordinary and out of control stress.”

In his own statements, the Petitioner did not describe in detail how the criminal activity affected his daily life, interactions with others, and overall health and well-being. He stated generally that he was frightened, did not trust people, and felt pressure in his chest when he thought about J-V- and P-S-. However, the Petitioner indicated that he continued attending church with J-V-, still worked, and did not state that he was unable to continue with his daily activities. Additionally, although [REDACTED] asserted that the Petitioner was at risk of physical health problems due to stress, the Petitioner did not submit medical records to support this claim. The relevant evidence does not demonstrate that the harm the petitioner suffered as a result of the extortion caused permanent or serious harm to his physical or mental soundness, or otherwise resulted in substantial physical or mental abuse pursuant to the regulation at 8 C.F.R. § 214.14(b)(1). Consequently, the evidence of record does not establish that the Petitioner has 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.

### 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 G-G-J-B-*, ID# 11465 (AAO Oct. 27, 2016)