



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

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

In Re: 23152127

Date: JAN. 18, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner submits a brief reasserting his eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’

helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in January 2016 with a Supplement B signed and certified by a captain of the New Mexico [redacted] Police Department (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to “Extortion,” “Conspiracy to commit any of the named crimes,” and “Related Crime(s);” and “Other,” although checked, was left blank. The certifying official listed New Mexico Statute Annotated 1978 section 30-16-9 (N.M. Stat. Ann.), which corresponds to extortion, as the specific statutory citation investigated or prosecuted. When asked to describe the criminal activity being investigated or prosecuted and the involvement of the Petitioner, the certifying official wrote, “[the Petitioner] has been helpful to the authorities who are currently investigating the criminal acts named on part 3 of this form.” When asked to provide a description of any known or documented injury to the Petitioner, the certifying official stated as follows, “[p]lease see the enclosed brief describing the manner on (sic) which [the Petitioner] and his wife, M-C-M-C-² are direct victims of the extortion by [the perpetrator].” Attached to the Supplement B as the referenced “brief,” is a [redacted] of New Mexico Incident Report completed by the New Mexico [redacted] Police Criminal Bureau, [redacted] dated [redacted] 2015. The [redacted] police report provides the following detail under the narrative heading: “[redacted], 2015, I was assigned by my immediate supervisor New Mexico [redacted] Police Investigations Bureau [redacted] C-L- to initiate an investigation regarding an alleged extortion of multiple immigrants in the [redacted] area. I was also notified all alleged victims are possibly Spanish speaking individuals. All information regarding my investigation will follow by a supplemental report.” The [redacted] police report listed the offenses as follows: “Fraud NMSA section 30-16-6; Embezzlement NMSA section 30-16-8; and Raquetering [sic] NMSA section 30-42-3.”

After reviewing the evidence in the record, the Director issued a request for evidence (RFE) for information that extortion, the crime listed on the Petitioner’s Supplement B, was the crime being investigated. The Director noted that the [redacted] police report did not contain a narrative explaining the circumstances of the case; the Petitioner’s personal statement did not appear to describe extortion under New Mexico law and did not show that he was threatened as specified in the extortion statute. However, we note that in his personal statement, the Petitioner claims he gave the perpetrator his documents and a \$6,000 down payment (with another \$6,000 to be paid once he received the lawful permanent resident card). The Director also requested that the Petitioner submit evidence that he

¹ The Supplement B also provides information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted and gives the certifying agency the opportunity to describe the crime, the victim’s helpfulness, and the victim’s injuries.

² We use initials to protect the identity of individuals.

suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. In response, the Petitioner provided, among other things, a brief; statements from the Petitioner and his spouse and his two children; 2020 psychological evaluations of the Petitioner and his spouse; a duplicate copy of the [redacted] 2015 [redacted] police report; copies of caselaw and statutes; a [redacted] 2016 supplemental police report in which twelve individuals were interviewed, (however the Petitioner was not one of the named individuals). We note that the Petitioner and his spouse are mentioned in the supplemental police report as accompanying his brother-in-law J-M- to the residence of the perpetrator. However, nowhere in the report does it indicate that the Petitioner or the perpetrator interacted with each other. We note that the report recounts that in 2011, J-M- met with the perpetrator “who could help him get legal documents, so he could be legalized in the United States.” The report further recounts that J-M- paid \$3,000 and while there he noticed a safe box that contained “several weapons from long rifles to hand guns, a silver police badge and more manila envelopes.” However, only the following offenses were listed in the report: “Fraud NMSA section 30-16-6; Embezzlement NMSA section 30-16-8; and Raquetering (sic) NMSA section 30-42-3.” The Petitioner also submitted a [redacted] 2017 supplemental report and under the heading synopsis, the investigator concluded, “[t]his supplemental report documents my termination in this investigation regarding the alleged extortion of illegal immigrants. Refer to the narrative portion of the report for details.” In this supplemental report, the investigator conducts a final interview with the new occupant of the former residence of the perpetrator.

After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner was not a victim of the qualifying crime of extortion as certified on the Supplement B. Specifically, the Director determined that law enforcement did not detect, investigate, or prosecute the crime of extortion, and the Petitioner was not the victim of extortion under New Mexico law. The Director noted that “the fact that the investigator alludes in his synopsis that immigrants are being extorted does not create the presumption that extortion is being certified or that fraud, embezzlement or racketeering is substantially similar to extortion without being further supported by corroborating evidence.” The Director correctly noted that the Petitioner was not named in the report as being interviewed by the investigator. The Director noted however, that it was J-M- who was interviewed and made contact with the perpetrator who advised him to meet him at his residence in [redacted] New Mexico. J-M- also stated that he took his sister, and her spouse (the Petitioner) to the meeting with the perpetrator sometime in or around [redacted] 2011. J-M- claimed he provided the perpetrator with \$3,000.00, his birth certificate, photo identification, and proof of residency. The perpetrator placed all his documents inside a manila envelope, wrote J-M-'s name on it and walked to a tall gray gun safe. J-M- reported that he was sitting at the dinner table and had a good visual to the inside of the gun safe and noticed several weapons, a silver badge, and more manila envelopes inside. The Director observed that during this interview, J-M- made no claim of any communicated or transmitted threats perpetrated by the perpetrator. The Director concluded that while this single incident report may not have been inclusive of all individuals that may have been victimized by the perpetrator, the Petitioner did not sufficiently demonstrate that he was a victim of the crime of extortion, or that the certifying official investigated and/or prosecuted this incident as extortion.

The Director noted that the Petitioner stated he has dealt with constant fear and agony knowing that the perpetrator had his personal information and still had not been caught by law enforcement officials. The Director observed that the Petitioner claimed to be the victim of threats or implied threats because the perpetrator said he knew people in law enforcement, and he showed his guns while saying that his

favorite gun was on him at all times. Therefore, the Petitioner claimed that he knew the perpetrator was always armed and believed that no one could harm the perpetrator because he would or could shoot them. The Director concluded that the Petitioner did not provide sufficient proof that the evidence as presented demonstrated that fraud, embezzlement, or racketeering are substantially similar to extortion. Nor did the Petitioner sufficiently demonstrate that the perpetrator threatened him for the purpose and/or intent to wrongfully obtain anything of value from the Petitioner, or wrongfully compel him from doing or refraining him from doing any act against his will as defined in the extortion statute at N.M. Stat. Ann. § 30-16-9.

On appeal, the Petitioner contends that he is eligible for U nonimmigrant status and the Director made erroneous conclusions of law and fact. The Petitioner submits a brief; several new letters of support; and copies of previously submitted documents and letters advocating for a positive exercise of discretion.³

B. The Petitioner Was Not a Victim of Qualifying Criminal Activity

U petitioners must establish that they were, in fact, victims of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (requiring substantial physical or mental abuse as a result of having been “a victim of [qualifying] criminal activity”); 8 C.F.R. § 214.14(a)(14) (defining “victim of qualifying criminal activity”), (b)(1) (reiterating the requirement of suffering “substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity”), (c)(2)(ii)-(iii) (requiring evidence to establish that “the petitioner is a victim of qualifying criminal activity” and a “signed statement by the petitioner describing the facts of victimization”).

Regarding the Petitioner's assertions that he was a victim of the qualifying crime of extortion, we acknowledge that in Part 3.3 of the Supplement B, the certifying official indicated that N. M. Stat. Ann. § 30-16-9 was the qualifying criminal activity that was being investigated or prosecuted. However, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement detected, investigated, or prosecuted the qualifying crime of extortion. And the Supplement B's certification on its own does not establish, by a preponderance of the evidence, that the perpetrator committed, and the Petitioner was in fact a victim of extortion. *See* 8 C.F.R. § 214.14(c)(4) (providing that the burden “shall be on the petitioner to demonstrate eligibility” and that “USCIS will determine, in its sole discretion, the evidentiary value of [the] ... submitted evidence, including the ... Supplement B”).

The relevant evidence does not indicate that the Petitioner was the victim of extortion. N.M. Stat. Ann. § 30-16-9, provides:

Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

³ We note that the approval of a U petition does not require a positive exercise of discretion, and a U petition may be approved despite the presence of adverse factors in the Petitioner's record, if the Petitioner is otherwise admissible.

- A. a threat to do an unlawful injury to the person or property of the person threatened or of another;
- B. a threat to accuse the person threatened, or another, of any crime;
- C. a threat to expose, or impute to the person threatened, or another, any deformity or disgrace;
- D. a threat to expose any secret affecting the person threatened, or another; or
- E. a threat to kidnap the person threatened or another.

The Petitioner states that he and his spouse willingly gave their personal information and money to the perpetrator as part of a scheme to obtain immigration status. However, the record does not indicate that the perpetrator used threats against the Petitioner, or his spouse in his efforts to obtain money from him in connection with this fraudulent scheme. The police reports indicate that there was an investigation into an immigration fraud scheme, and several other individuals were interviewed. These individuals claimed they paid thousands of dollars to the perpetrator in order to obtain an immigration status. However, the evidence does not describe any significant or substantial harm sustained by the Petitioner. Likewise, the police reports do not indicate that the Petitioner gave money or any documentation to the perpetrator, or that he was threatened, or that he was even interviewed by the New Mexico Police Department. Consequently, the Supplement B's listing of N.M. Stat. Ann. § 30-16-9 as having been investigated or prosecuted as perpetrated against the Petitioner on its own is insufficient to establish that the Petitioner was in fact a victim of that offense.

C. The Remaining Eligibility Criteria for U-1 Classification

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. Because the Petitioner has not established that he was the victim of qualifying criminal activity, or that he suffered substantial physical or mental abuse, he cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act. Thus, the Petitioner is ineligible for U nonimmigrant status.

ORDER: The appeal is dismissed.