IN RE: [IDENTIFYING INFORMATION REDACTED BY AGENCY] 


On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]

November 21, 2013

*1 DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity or that he has suffered substantial physical or mental abuse as a result of his victimization. On appeal, counsel submits a brief and a letter from the Oregon Department of Justice.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:
(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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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 laws: ... extortion; ... witness tampering; ... or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

“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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a)(14) defines a victim, in pertinent part, as; Victim of qualifying criminal activity
generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

*2 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 the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States in February, 1994, without inspection, admission or parole. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on May 13, 2011, On March 8, 2012, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director determined that the petitioner did not establish that he was a Victim of qualifying criminal activity or that he had suffered substantial physical or mental abuse as a result of his victimization. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of theft by extortion, which is the qualifying crime of extortion, and is substantially similar to witness tampering. Counsel also claims that the director erred in finding that the petitioner has not suffered substantial physical or mental abuse because he did not adequately address all the evidence submitted.

Claimed Criminal Activity

In his May 2, 2011 statement, the petitioner recounted that in 2010 he paid a tax than he thought was an attorney to obtain lawful permanent residency for the petitioner. The attorney and his interpreter repeatedly asked the petitioner to pay them money, which the petitioner did, and misled him about his immigration case. After the petitioner received deportation paperwork, the interpreter warned the petitioner not to report him or the attorney to law enforcement, or the attorney would have the petitioner deported and further harm the petitioner and his family.

Analysis

*3 On appeal, the petitioner has established that he was the victim of a qualifying crime, but has not shown that he suffered substantial physical or mental abuse as a result.

Qualifying Criminal Activity

In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] of the [IDENTIFYING INFORMATION REDACTED BY AGENCY] (certifying official). The certifying official listed the criminal acts that the petitioner was the victim of, at Part 3.1, as extortion, witness tampering, and other: "theft." At Part 3.3,
the certifying official listed the statutory citations of the crimes investigated or prosecuted as Oregon Revised Statutes (ORS) section 164.055 (theft in the first degree), ORS section 164.057 (aggravated theft in the first degree), and ORS section 164.075 (theft by extortion), At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the perpetrator extorted over $40,000 in fees from the petitioner and other victims by falsely representing himself as an immigration attorney, and then threatened to have the petitioner deported if he reported the crime to law enforcement.

In his denial decision, the director did not fully explain why ORS § 164.07 (theft by extortion) was not a qualifying crime. Here, the certifying official stated that the petitioner was the victim of extortion, and listed ORS §164.075 as one of the crimes investigated of prosecuted. Under Oregon’s criminal law, ORS §164.075 is the only statute penalizing extortion. Accordingly, the petitioner has demonstrated that he was the victim of extortion, a qualifying crime listed at subsection 101(a)(15)(U)(iii) of the Act. The director’s determination to the contrary will be withdrawn.

Because the petitioner has established that he was the victim of the qualifying criminal activity of extortion, we do not reach the issue of whether he was also the victim of the qualifying crime of witness tampering. However, the record shows that the certifying official did not state that witness tampering or any similar activity was investigated or prosecuted. See 8 C.F.R. § 214.14(c)(2)(i) (requiring the certifying official to state that the petitioner has been the “victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.”).

### Substantial Physical or Mental Abuse

The petitioner has not, however, demonstrated that he suffered substantial physical or mental abuse resulting from the extortion. In his May 2, 2011 statement, the petitioner recounted his interactions with the individual posing as an attorney and his interpreter and noted that the interpreter threatened him with deportation and harm to his family. On the Form 1-918 Supplement B, the certifying official listed the known injuries to the petitioner as “no known physical injuries.” In her letter dated April 3, 2012, [IDENTIFYING INFORMATION REDACTED BY AGENCY] of Justice, stated that the petitioner was the victim of unauthorized practice of immigration law and that he was threatened with deportation and harm to his family.

*4 The petitioner submitted a psychological evaluation from [IDENTIFYING INFORMATION REDACTED BY AGENCY] a licensed professional counselor, dated October 21, 2012. [IDENTIFYING INFORMATION REDACTED BY AGENCY] stated that as a result of notario fraud, the petitioner has been suffering from sleep disturbances and is anxious. He noted that the petitioner has experienced panic attacks, and that he has gastritis and high blood pressure. [IDENTIFYING INFORMATION REDACTED BY AGENCY] reported that the petitioner appears hyper-vigilant and paranoic, and that he worries about his children’s physical and mental health. He diagnosed the petitioner with Dysthymic Disorder (depression) and Generalized Anxiety disorder. He also opined that the petitioner is at risk for developing Panic Disorder without Agoraphobia. [IDENTIFYING INFORMATION REDACTED BY AGENCY] noted that the petitioner is afraid of the attorney and what he will do to the petitioner and his family.

On appeal, counsel submits a second letter from [IDENTIFYING INFORMATION REDACTED BY AGENCY] from the Oregon Department of Justice. [IDENTIFYING INFORMATION REDACTED BY AGENCY] repeats the information that was provided in her first letter, and also notes that as a result of the unauthorized practice of law, the petitioner has suffered financial losses and significant emotional distress. She also states that in general, victims of notario fraud face the loss of large sums of money and possible deportation.

While the record shows that the petitioner has been depressed and anxious, the preponderance of the evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the extortion. The petitioner himself and the certifying official do not describe any physical or mental injuries to the petitioner resulting from the extortion [IDENTIFYING INFORMATION REDACTED BY AGENCY] first letter does not mention any injuries to the petitioner, and although in her letter on appeal she states generally that the petitioner has suffered significant emotional distress as a result of the notario fraud, she does not provide any details or describe any abuse. Counsel asserts that the petitioner's gastritis and high blood pressure are the result of his victimization, but counsel submits no medical records of Other evidence to support that contention, and [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not attribute the petitioner's gastritis or high blood pressure to the extortion.

We do not minimize the impact of the events upon the petitioner; however, the preponderance of the evidence does not
demonstrate that the extortion caused the petitioner to suffer substantial physical or mental abuse. On appeal, [IDENTIFYING INFORMATION REDACTED BY AGENCY] and counsel both refer to the financial loss the petitioner has suffered, and counsel cites section 101(b)(1) of the Act and 8 C.F.R. § 204.2(e)(1)(v) as evidence that USCIS recognizes both mental harm and financial loss as abuse. See [IDENTIFYING INFORMATION REDACTED BY AGENCY] letter dated April 19, 2013; Brief on Appeal at 12-13. Section 101(b)(1) of the Act and 8 C.F.R. § 204.2(e)(1)(v) pertain to the definition of a “child” and the residence required to establish eligibility of a child of an abusive U.S. citizen or lawful permanent resident parent to self-petition for immigrant classification under section 204(a)(1)(A)(iv) and (a)(1)(B)(iii) of the Act. Those provisions do not apply to these proceedings. As stated in the U nonimmigrant regulation, “[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).

*5 The relevant evidence does not demonstrate that the financial harm the petitioner suffered from 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).

In her brief, counsel asserts that the director overlooked evidence such as portions of the mental health evaluation, the Oregon Department of Justice letter, and the petitioner’s previous attorney’s brief in his decision dated November 29, 2012. Although the director did not fully discuss each claim and piece of evidence, his oversight has not prejudiced the petitioner. The AAO has reviewed the counselor’s assessment, the letters from the Oregon Department of Justice, current and prior counsel’s claims and the other relevant evidence on appeal. As explained above, the preponderance of the relevant evidence does not show that the petitioner has suffered substantial physical or mental abuse as the result of his victimization under the factors and standard explicated in the regulation at 8 C.F.R. § 21414(b)(1). Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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 (BLA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Ron Rosenberg
Chief
Administrative Appeals Office

Footnotes

1 Counsel asserts that it was improper for the director to conclude that the petitioner’s previous attorney’s legal brief had no evidentiary value. See Brief on Appeal at 14-15. Although the director should have considered the petitioner’s previous attorney’s brief, the unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1, 3 n.2 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).
2010 WL 8334002 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office

[IDENTIFYING INFORMATION REDACTED BY AGENCY]

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
March 4, 2010

*1 DISCUSSION: The Director, [IDENTIFYING INFORMATION REDACTED BY AGENCY] Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


The director denied the petition because the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, or that he suffered substantial physical or mental abuse as the result of the commission of qualifying criminal activity. On appeal, counsel submits a brief statement on the Form I-290B, Notice of Appeal or Motion.

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felony assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.]
The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of [IDENTIFYING INFORMATION REDACTED BY AGENCY] who states that he last entered the United States in March 1993 without inspection. The petitioner submitted an asylum application in July 2002, and he was placed into removal proceedings when his asylum application was referred to the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Immigration Court. The petitioner remains in proceedings before the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Immigration Court and his next hearing date is scheduled for July 8, 2011.

The petitioner filed the instant Form I-918 U petition on May 2, 2008. On April 26, 2010, the director issued a Request for Evidence (RFE) so that the petitioner could submit evidence establishing that he was the victim of a qualifying crime and that he suffered substantial physical and mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 petition.

On appeal, counsel maintains that although the perpetrator of the crime against the petitioner was convicted of grand theft, the offense was nevertheless substantially similar to the qualifying crime of extortion under [IDENTIFYING INFORMATION REDACTED BY AGENCY] law. Counsel does not address the director’s conclusion that the petitioner did not suffer substantial physical or mental abuse. We affirm the director’s determinations and the appeal will be dismissed, as counsel’s claims fail to overcome the grounds for denial.

The Criminal Activity

In his April 30, 2008 statement that he submitted with the initial Form I-918 U petition filing, the petitioner averred that sometime in 2002, he heard that a notario could assist him in legalizing his status in the United States. The petitioner stated that the notario wanted $5,000 from the petitioner to “file some papers with [U.S. Citizenship and Immigration Services],” and that once he started going to this notario, it was too late to not continue to deal with him. The petitioner alleged that he gave the notario his second payment right before his asylum interview but did not understand what the interview was about. Although he was worried, the petitioner stated that he kept paying the notario. The petitioner stated that he realized that the notario had lied and cheated him after he was placed into removal proceedings before the immigration court, so he refused to make any more payments. The petitioner stated that he reported his experiences with the notario to the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Police Department in 2004, and he spoke with the District Attorney. He also stated that he testified at the notario’s preliminary hearing in Superior Court.1

When filing his U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] Deputy District Attorney, [IDENTIFYING INFORMATION REDACTED BY AGENCY] California. The criminal act at Part 3.1 of the form was listed as fraud by false pretenses. Part 3.3 of the form listed the statutory citation for the crime as [IDENTIFYING INFORMATION REDACTED BY AGENCY] Penal Code (C.P.C.) § 487(a). At Part 3.5 of the form, which provides for a brief description of the criminal activity, [IDENTIFYING INFORMATION REDACTED BY AGENCY] wrote:

The perpetrator, [the notario], lied to [the petitioner] about his ability to obtain legal permanent resident status for him, receiving payments from [him] totaling about $3,000.00, while filing documents w/USCIS that could only have the result of propelling [the petitioner] into removal proceedings, without explaining to him that this would occur, and that his chances of prevailing in removal proceedings was extremely small. The perpetrator victimized many undocumented aliens in [IDENTIFYING INFORMATION REDACTED BY AGENCY] County in the same way.
At Part 3.6, [IDENTIFYING INFORMATION REDACTED BY AGENCY] listed any known injuries to the petitioner as the loss of the money he had paid to the notario and the need for the petitioner to retain an attorney to represent him in removal proceedings. [IDENTIFYING INFORMATION REDACTED BY AGENCY] noted that the petitioner is faced with being removed despite being married to a U.S. citizen.

**Theft Under C.P.C. § 487(a) is Not Substantially Similar to the Qualifying Crime of Extortion**

The crime of grand theft is not a statutorily enumerated crime 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.” 8 C.F.R. § 214.14(a)(9).

Counsel claims that the crime of grand theft, of which the petitioner was a victim, is substantially similar to the qualifying crime of extortion under C.P.C. § 518. Under [IDENTIFYING INFORMATION REDACTED BY AGENCY] law, theft is defined, in relevant part, as follows:

> Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property ... is guilty of theft.

C.P.C. § 484(a) (West 2011).

Under California law, grand theft is committed “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950) ...” (West 2011). Extortion is defined under C.P.C. § 518 as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” C.P.C. § 487(a) (West 2011).

*4 The relevant evidence in this case fails to demonstrate that grand theft is substantially similar to extortion. Extortion under C.P.C. § 518 requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear, or under color of official right.” Theft under C.P.C. § 487(a) contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of which the petitioner was a victim is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

Counsel does not address this legal insufficiency on appeal, but rather argues that what happened to the petitioner, in fact, is similar to extortion. Counsel claims the notario created a situation of danger unbeknownst to the petitioner and extracted $3,000 from the petitioner with an intent to extract an additional $2,000 with the explicit or implied threat that if the notario did not give the notario the money, the petitioner would lose everything he had and be removed to [IDENTIFYING INFORMATION REDACTED BY AGENCY] Counsel cites a Second Circuit Court of Appeals decision for the proposition that an extortion conviction can be predicated on a fear of economic harm. Counsel also cites a [IDENTIFYING INFORMATION REDACTED BY AGENCY] Supreme Court and two [IDENTIFYING INFORMATION REDACTED BY AGENCY] State Appellate Court decisions regarding the definition of the term “threats” as used to induce the fear requisite to the crime of extortion.

Nothing in the petitioner’s testimony or the relevant evidence in the record indicates that the notario induced the petitioner to give him $3,000 through force, fear or the color of official right. Counsel claims that the notario subjected the petitioner to explicit and implicit threats, but the petitioner himself does not provide details of any explicit or implicit threats that occurred in his dealings with the notario. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner’s burden of proof. *Matter of Obaigbea*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).
The cases cited by counsel also fail to support his claims. The State cases address what constitutes a threat inducing fear under the crimes of extortion and sending threatening letters with an intent to extort money under C.P.C. §§ 518, 523, Flatley v. Mauro, 139 P. 3d 2, (CA 2006); People v. Oppenheimer, 209 Cal. App. 2d 413 (1962); People v. Massengale, 261 Cal. App. 2d 758 (1968) The Second Circuit case affirms that the element of fear in the federal extortion statute, 18 U.S.C. § 1951(b)(2), may be satisfied by putting the victim in fear of economic loss, but that such fear was not demonstrated in that particular case. United States v. Cape, 817 F.2d 947, 951, 952-53 (2d Cir. 1987). Regardless of what constitutes a threat or the element of fear in the [IDENTIFYING INFORMATION REDACTED BY AGENCY] for federal extortion statutes, the record in this case does not establish that the notario ever threatened the petitioner or otherwise subjected him to extortion.

*5 Even if the petitioner had provided evidence that the notario subjected him to extortion, the record would still be deficient because the law enforcement certification fails to state that the petitioner was the victim of an extortion crime which the [IDENTIFYING INFORMATION REDACTED BY AGENCY] County District Attorney’s Office was investigating or prosecuting. The qualifying criminal activity must be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(2), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated or prosecuted the notario for extortion in the past or intends to do so in the future.

The offense identified in this case, grand theft, is not similar to the qualifying crime of extortion because the nature and elements of these offenses are not substantially similar. Counsel does not claim that grand theft under C.P.C. § 487(a) is similar to any of the other criminal activities listed at section 101(a)(15)(U)(ii) of the Act. Accordingly, the petitioner has not established that he was the victim of qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if his victimization was established, however, the record does not show that he suffered substantial physical or mental abuse as a result.

In his April 30, 2008 statement that was submitted when filing his Form I-918 U petition, the petitioner recounted his interactions with the notario and stated that what happened to him is like a nightmare. In his July 14, 2010 declaration, which was submitted in response to the director’s RFE, the petitioner indicated that his experiences in dealing with the notario and being placed into removal proceedings have impacted his life in the following manner: he and his family are prevented from “doing things”; he has felt depressed at times; he has lost time from work and income because of the need to go to immigration court; he has paid large amounts in attorneys’ fees; he and his family lost their house and had to move to an apartment; and he cannot travel outside of the United States for family vacations. The petitioner added that his family’s life is on hold because he is waiting on a decision from the immigration court and that he becomes depressed when he thinks about being ordered to leave the United States. The petitioner added that he has not received counseling but “it has affected me in may [sic] and different ways.”

We recognize the petitioner’s fear about his future status in the United States and do not discount how those emotions have affected his life. However, the petitioner’s two declarations fail to contain the probative details of the harm he claims to have suffered. While he recounts that he has been depressed at times and suffered financial losses, the petitioner has not provided any further information or other evidence that would indicate that any abuse he suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

*6 The offense of grand theft under C.P.C. § 487(a) is not a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that the notario was investigated or prosecuted for any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101
(a)(15)(U)(i)(I) - (IV) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office

Footnotes

1 A news article in the record indicates that the notario was convicted on 10 court of grand theft for defrauding clients of thousands of dollars in a scheme that promised legal residency in the United States.

2010 WL 8334002 (DHS)
AAU EAC 09 214 50377 (DHS), 2011 WL 7068667
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. EAC 09 214 50377
April 18, 2011

*1 DISCUSSION: The Director, Vermont Service Center, denied the Petition for U Non-immigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.


The director denied the petition on the basis that the petitioner had failed to establish that she was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, counsel submits a Notice of Appeal (Form I-290B) reasserting the petitioner’s eligibility.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:
(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]
Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(ii). . . . This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity—described in section 101(a)(15)(U)(iii).

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(9) Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. 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.

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity . . .

(3) (ii) A petitioner may be considered a victim of . . . perjury . . . if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the . . . perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the . . . perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator of the criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.
The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico. In 2000, the petitioner entered the United States without inspection. In 2003, the petitioner returned to Mexico. On May 31, 2003, the petitioner reentered the United States without inspection. On January 24, 2008, the petitioner filed an Application for Asylum and Withholding of Removal (Form I-589). On March 5, 2008, the Form I-589 was referred to an immigration judge and the petitioner was placed into immigration proceedings. The petitioner remains in removal proceedings and her next hearing date is scheduled for June 15, 2011.

On July 28, 2009, the petitioner filed the instant Form I-918 U petition. On February 17, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On October 21, 2010, after considering the evidence of record, including counsel’s response to the RFE, the director denied the petition and the petitioner’s Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the director failed to consider the possibility of future criminal charges against the perpetrator of the pejury and that the investigation is on-going as a result of extensive investigations by the Orange County District Attorney’s Office; the director incorrectly determined that the petitioner was not directly or proximately harmed by the perpetrator of the crime; and the director incorrectly determined that extortion or fraud is not a qualifying criminal activity.

The Claimed Criminal Activity

The petitioner claimed in her July 8, 2009 affidavit that she and her husband were the victims of qualifying criminal activity because she was placed into in removal proceedings as a result of a notario lying to her and her husband by stating that he could obtain permanent residency for them. The petitioner claimed that the notario began threatening to call immigration to come and arrest her and her husband at their house and to deport them by force.

*4 The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Assistant District Attorney[IDENTIFYING INFORMATION REDACTED BY AGENCY] (certifying official) of the Orange County District Attorney’s Office. At Part 3.1, the certifying official indicated that the petitioner was the victim of criminal activity involving, or similar to, extortion and perjury. At Part 3.3, the certifying official cited the following sections of the California Penal Code (CPC) as the criminal activity:

Perjury under section 118 of the CPC provides:
(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may be law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence. (West 2011)
Grand theft under section 487 of the CPC provides:
Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1)(A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars ($250).

(B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars ($250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars ($250) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars ($250).

*5 (3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars ($950) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(2) A firearm.

(West 2011)

Extortion under section 518 of the CPC provides:
Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. (West 2011)

At Part 3.5, [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not describe the criminal activity being investigated or prosecuted. Part 3.5 referred to an "attached declaration"; however, none was attached. At Part 3.6, [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not describe any known or documented injury to the petitioner.

In response to the director's RFE, the petitioner submitted a letter, dated June 17, 2009, which was signed by[IDENTIFYING INFORMATION REDACTED BY AGENCY] an Investigator with the Orange County District Attorney's Office. [IDENTIFYING INFORMATION REDACTED BY AGENCY] stated that the petitioner and his spouse are witnesses in an open case that the Orange County District Attorney's Office intends to prosecute. [IDENTIFYING INFORMATION
REDACTED BY AGENCY] states that the open case being investigated is an Immigration Fraud case against A-F-; the notario. [REDACTED BY AGENCY] states that the notario promised the petitioner permanent residency in the United States, collected thousands of dollars from the petitioner, and channeled her political asylum application into Federal Court without her knowledge or consent. [REDACTED BY AGENCY] states that the petitioner was not informed that political asylum applications have to be filed within a year of entering the United States; that political asylum application from Mexico are rarely granted; or that the petitioner could be deported as a result of filing the political asylum application. [REDACTED BY AGENCY] states that the petitioner is cooperative and ready, now and in the future, to assist in the case which makes her a valuable and possibly critical witness which the office will eventually need to successfully prosecute the case.

In response to the director's RFE, the petitioner also submitted an affidavit, dated May 14, 2010, from her spouse. The petitioner's spouse states that he met the notario through the owner of the apartment in which he resided. He stated that the notario informed him that he could fix his legal documents to be able to stay in the United States. He stated that the notario informed him that he was a lawyer with other lawyers working for him and that he was instructed to complete an application and bring some documents such as pay stubs and birth certificates. He stated that once he brought the application and documents to the notario, he started a contract to start the process without including $750 which he had already paid to the notario. He stated that, when he returned to the notario's office, the notario told him to sign a form over which he placed his hand. He stated that the notario placed the form in an envelope and had him mail it out. He states that he received a document which the notario informed him was a notice to appear for an interview. He claims that when he appeared at the interview he was informed that he was applying for political asylum at which time he realized that something was wrong. He stated that when he attempted to confront the notario, the notario told him that everything was going well and that he should not worry. He stated that, after consulting with other individuals, he was convinced that something was wrong and confronted the notario again. He stated that the notario got very upset with him and told him not to worry. He claims that when he informed the notario that he had friends who had problems after going through the same process, the notario got mad and told him that he had to trust him. He stated that he then consulted with a friend's immigration attorney who informed him that the work performed by the notario was a fraud and that he could be deported. He stated that he confronted the notario again and informed him that he was not going to pay him anything else. He claims that the notario became furious and said it was the last time he was going to tell him to trust him because everything was going perfectly fine and not to listen to other people who were just confusing him. He claims that the notario then stated that if he did not pay him he would turn him into immigration. He stated that he became scared and asked him not to do it and that he would pay him. He stated that this is when his business relationship with the notario ended.

*6 As noted previously, the director found that the petitioner was not a victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(ii) of the Act. The director found that although perjury and extortion are listed as qualifying crimes at section 101(a)(15)(U)(ii) of the Act, the petitioner had failed to establish that she had been the victim of those crimes.

On appeal, counsel claims that the petitioner was the direct victim and suffered proximate harm as a result of perjury, extortion and fraud.


Grand Theft Under C.P.C. § 487 is Not Substantially Similar to the Qualifying Crime of Extortion and the Petitioner has not Established that she was the Victim of Extortion

Although the crime of extortion is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of that crime (as well as grand theft and perjury), the certifying official did not provide any explanation of how the petitioner was a victim of extortion. The only clarifying evidence is the letter from [REDACTED BY AGENCY] briefly describing
the criminal activity and the petitioner's involvement in, and victimization from, such criminal activity. [IDENTIFYING INFORMATION REDACTED BY AGENCY] does not explicitly state the criminal activity being investigated, or provide the statutory citations for the crimes that his office is investigating. Without further information from the certifying agency, the Form I-918 Supplement B is deficient. We, therefore, do not consider the crime of extortion to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute the notario in the future for such a crime.

The crime of grand theft is not a statutorily enumerated crime 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." 8 C.F.R. § 214.14(a)(9).

*7 On appeal, counsel states that the director incorrectly determined that extortion is not a qualifying criminal activity.2 Under California law, grand theft is committed "when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950) . . . ." (West 2011).

Extortion is defined under section 518 of the CPC as "the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." (West 2011).3

Grand theft is not substantially similar to extortion. Extortion under section 518 of the CPC requires that the victim's property be obtained through the victim's consent, which was "induced by a wrongful use of force or fear, or under color of official right." Grand theft under section 487(a) of the CPC contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of grand theft is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

The Petitioner was not a Victim of Perjury

As noted above, although the crime of perjury is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of that crime (as well as grand theft and extortion), the certifying official did not provide any explanation of how the petitioner was a victim of perjury. The only clarifying evidence is the letter from [IDENTIFYING INFORMATION REDACTED BY AGENCY] briefly describing the criminal activity and the petitioner's involvement in, and victimization from, such criminal activity. [IDENTIFYING INFORMATION REDACTED BY AGENCY] does not explicitly state the criminal activity being investigated, or provide the statutory citations for the crimes that his office is investigating. Without further information from the certifying agency, the Form I-918 Supplement B is deficient. We, therefore, do not consider the crime of perjury to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute the notario in the future for such a crime.

Even if the petitioner had established that the crime of perjury was investigated or prosecuted, the relevant evidence does not establish that the petitioner was the victim of perjury.

Under section 127 of the CPC, subornation of perjury is defined as: "Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured." (West 2011).

*8 To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the notario procured her to commit perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring it to justice for other criminal activity; or (2) to further its abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The evidence in the record does not demonstrate that the notario suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity. The only evidence of law
enforcement action against the notario is the letter from [IDENTIFYING INFORMATION REDACTED BY AGENCY] indicating that the notario is under an ongoing and open investigation nearly two years after the petitioner signed her asylum application. As the letter indicates that the notario is being investigated for immigration fraud, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application would avoid or frustrate the district attorney’s prosecution efforts, as the crime would only provide further evidence of the notario’s malfeasance.

Counsel has also not established that the notario committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. Apart from having the petitioner sign an asylum application and filing the application with USCIS, the relevant evidence does not indicate that any of the notario’s subsequent dealings with the petitioner and her husband involved perjury. The record shows that the notario filed the asylum application shortly after being retained by the petitioner and her husband and, thus, if perjury were committed, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by the notario, the exploitation resulted from fraud as well as the notario’s subsequent misleading interactions with the petitioner, not from any perjury under section 118 of the CPC. Accordingly, we do not find that the notario suborned the petitioner’s perjury, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system.

Remaining Eligibility Criteria

The petitioner’s supporting documentation establishes the notario’s fraudulent dealings, inadequate legal advice and theft. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that she was herself subjected to perjury or extortion.

The record does show that the petitioner was helpful to the certifying agency in its investigation of the notario and that she possessed some information about the notario’s fraudulent business practices. While the petitioner’s assistance to the certifying agency may have been valuable and was laudable, her own victimization has not been established. In [IDENTIFYING INFORMATION REDACTED BY AGENCY] letter, he does not specifically identify any criminal activity of which the petitioner was a victim. Rather, he states that the petitioner was not informed of the legal consequences of filing an asylum application and paid thousands of dollars for an application that would eventually fail to provide her with the promised permanent residency. The petitioner’s statements do not indicate that during her business relationship with the notario, she was the victim of perjury or extortion or any attempt or conspiracy to commit any of these qualifying crimes as stated on the law enforcement certification.

*9 Being a victim of qualifying criminal activity is a threshold requirement for the remaining U nonimmigrant eligibility criteria at subsections 101(a)(15)(U)(i)(II) - (IV) of the Act. See 8 C.F.R. § 214.14(b), (c)(2). Because the petitioner has not demonstrated that she was the victim of qualifying criminal activity, she cannot meet any of the eligibility criteria for U nonimmigrant classification.

Conclusion

As set forth above, the petitioner has failed to establish that she was the victim of qualifying criminal activity or that she meets any of the eligibility requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) - (IV) of the Act, and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office
Footnotes

1 Name withheld to protect individual's identity.

2 The AAO notes that counsel also refers to fraud as a qualifying criminal activity, however, the statute does not list fraud as a qualifying criminal activity and the certifying official did not list fraud on the Form I-918 Supplement B.

3 Under section 524 of the CPC, a threat or an attempt to extort is defined as: "Every person who attempts, by means of any threat, such as is specified in Section 519 of this code, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment."
2011 WL 10845074 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
September 14, 2011

*1 DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity, and therefore could not show that he met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner’s representative submits a brief and a psychological evaluation of the petitioner, his wife and their children.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:
(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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:
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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

*2 “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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1990 without inspection. The petitioner was placed into removal proceedings before the Los Angeles, California Immigration Court in 2002 to pursue his asylum application (Form I-589).

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on October 14, 2009. On May 6, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, the petitioner contends through his representative that he is eligible for U nonimmigrant classification because he was the victim of notario fraud, which is similar to the qualifying crime of perjury or solicitation to commit perjury.

The Claimed Criminal Activity

*3 According to the petitioner, in 1993 he was working at a company whose owner brought in lawyers to fix the employees' immigration status. The petitioner stated that he and his wife started a payment plan with one of the lawyers to file the necessary paperwork to obtain legal status in the United States, but when they finished paying, they realized that the lawyer had filed an asylum application instead of an employment-based application. The petitioner recounted that he and his wife had an appointment to see the lawyer, but decided to visit the lawyer's office before their appointment, at which time they
saw that the lawyer's office was empty. The petitioner maintained that he and his wife have hired other attorneys to help legalize their immigration status, but they have had no success and they "finally ended up with a deportation order."

The Petitioner is Not a Victim of Perjury or any other Qualifying Criminal Activity

In support of his I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] of the Huntington Park, California Police Department [IDENTIFYING INFORMATION REDACTED BY AGENCY] The certifying official listed the criminal act at Part 3.1 as perjury, but did not provide a statutory citation for the criminal activity at Part 3.3. At Part 4, the certifying official indicated that the petitioner did not possess information concerning the criminal activity, that he had not been, was not being, and was not likely to be helpful in the investigation or prosecution of the criminal activity, and that he had unreasonably refused to provide assistance in the criminal investigation or prosecution. The certifying official indicated at Part 4.5 that the statute of limitation for fraud expired 14 years ago, and the petitioner has not been helpful to law enforcement authorities considering the 17-year delay in reporting the crime.

On appeal, the petitioner's representative states that fraud is a qualifying crime in this matter because the purported lawyer solicited the petitioner and his wife to commit perjury by filing an asylum application on their behalf. The petitioner's representative argues that even if the petitioner was not a victim of perjury, notario fraud should be recognized as a qualifying crime because it would increase the incentive for its victims to come forward to help law enforcement authorities combat it. The petitioner's representative points out that the Executive Office for Immigration Review (EOIR) considers notario fraud a serious offense and has dedicated funds to a fraud and abuse prevention program.

To establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the lawyer procured him to commit perjury, and if so, that he did it, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

*4 The evidence in the record does not demonstrate that the lawyer suborned the petitioner to commit perjury as a way to avoid or frustrate efforts by law enforcement personnel to bring the lawyer to justice for other criminal activity, or as a means to further his abuse or exploitation over the petitioner through manipulation of the legal system. The certifying official indicates that no investigation of the lawyer's fraud against the petitioner was ever undertaken because the petitioner did not report the fraud until 17 years after its occurrence when the statute of limitations had run out. As the lawyer with whom the petitioner consulted was never investigated or charged with a crime based on the fraud he had committed against the petitioner and the record lacks evidence that the lawyer was engaged in any other criminal activity at the time, there is no basis to conclude that suborning the petitioner to commit perjury was done to avoid or frustrate any ongoing law enforcement investigation of him. The record also fails to show that the lawyer committed a perjury offense to further abuse, exploit, or exert undue control over the petitioner through the manipulation of the legal system. The record shows that the lawyer filed the petitioner's asylum application shortly after being retained by the petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by the lawyer, the exploitation resulted from the initial fraud, not from further perjury.

The petitioner's representative states on appeal that notario fraud should be included in the list of qualifying crimes enumerated at section 101(a)(15)(U)(iii) of Act. U.S. Citizenship and Immigration Services (USCIS) lacks the authority to change the statutory list of qualifying crimes at section 101(a)(15)(U)(iii) of Act; however, both the statute and the regulation at 8 C.F.R. § 214.14(a)(9) allow for "any similar activity" to be considered a qualifying crime when the nature and elements of a particular criminal offense are substantially similar to one of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Here, the petitioner has not demonstrated that the criminal offense of which he was a victim, notario fraud, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including perjury or solicitation to commit perjury. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria
The petitioner’s failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) - (IV) of the Act. In addition, the petitioner has not complied with section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), which requires:

*a5 a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

In this case, the certifying official indicated that the petitioner was not helpful in the investigation or prosecution of the criminal activity. Accordingly, the petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office

2011 WL 10845074 (DHS)
2012 WL 8503766 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
May 9, 2012

*1 DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of
the commission of qualifying criminal activity.

***

*2 (ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
   (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
   (2) To further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who states that he last entered the United States in 1992 without being inspected, admitted or paroled by an immigration officer. The petitioner submitted an asylum application in January 2003, and he was placed into removal proceedings when his asylum application was referred to the Los Angeles, California Immigration Court. The petitioner remains in proceedings before the Los Angeles Immigration Court and his next hearing date is scheduled for June 15, 2012.

The petitioner filed the instant Form I-918 U petition on March 31, 2008. On December 2, 2009, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition because the petitioner was not the victim of qualifying criminal activity and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief statement asserting, in part, that the perpetrator procured the petitioner to commit perjury and the petitioner’s law enforcement certification (Form I-918 Supplement B) indicates that the criminal activity is one of the enumerated crimes at section 101(a)(15)(U)(iii) of the Act.

Analysis

The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director’s decision to deny the petition.

In a January 12, 2006 affidavit in the record, the petitioner averred that in approximately June 2002 he sought the services of a notario, [IDENTIFYING INFORMATION REDACTED BY AGENCY] about legalizing his status in the United States. The petitioner stated that [IDENTIFYING INFORMATION REDACTED BY AGENCY] advised him that he was eligible for lawful permanent residence status, so he retained [IDENTIFYING INFORMATION REDACTED BY AGENCY] for an initial fee of $1,000. The petitioner stated that on an undisclosed date, he received an interview notice from the immigration office in Anaheim, California. The petitioner recounted that when he went to the Anaheim immigration office, he did not
know why he had an interview but then realized that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had filed an asylum application on his behalf. According to the petitioner, the interviewing immigration officer told him that he had signed the asylum application under penalty of perjury, and that the application indicated that that he feared returning to Mexico. The petitioner stated that he did not fear going back to Mexico, but he had no place to go in that country. According to the petitioner, the asylum application that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had him sign stated something that was untrue. The petitioner indicated that he was placed into removal proceedings but did not realize that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had committed fraud against him until [IDENTIFYING INFORMATION REDACTED BY AGENCY]was arrested. The petitioner stated that[IDENTIFYING INFORMATION REDACTED BY AGENCY]and his associate,[IDENTIFYING INFORMATION REDACTED BY AGENCY] did not threaten to cause him any harm during his dealings with them.

*3 The Form I-918 Supplement B in the record was certified by [IDENTIFYING INFORMATION REDACTED BY AGENCY] Orange County, California (certifying official). The criminal acts indicated at Part 3.1 were perjury, subornation to commit perjury, extortion, as well as solicitation and attempt to commit extortion and perjury. At Part 3.3, the certifying official listed the statutory citations of the crimes as California Penal Code (C.P.C) §§ 487 (grand theft), 524 (attempted extortion), and 664/127 (attempted subornation of perjury). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated: “Procur[ing] another to commit perjury, extortion and grand theft [sic].” Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6: “Financial loss; Posttraumatic Stress Disorder.”

Attached to the Form I-918 Supplement B was a letter from [IDENTIFYING INFORMATION REDACTED BY AGENCY] and[IDENTIFYING INFORMATION REDACTED BY AGENCY] identified the petitioner as a witness against [IDENTIFYING INFORMATION REDACTED BY AGENCY] and described the petitioner’s interactions with [IDENTIFYING INFORMATION REDACTED BY AGENCY] just as the petitioner had in his January 2006 affidavit. [IDENTIFYING INFORMATION REDACTED BY AGENCY] stated that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had victimized thousands of individuals by telling them, in part, that “Immigration” would go to their homes and physically deport them if they did not pay his fees. However, [IDENTIFYING INFORMATION REDACTED BY AGENCY] stated that the petitioner “was not extorted for money or silence, but this case [against Fernandez] involves many that were.”

The regulation at 8 C.F.R. § 214.14(o)(4) provides U.S. Citizenship and Immigration Services (USCIS) with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918, Supplement B. Although the certifying official indicated at Parts 3.1 and 3.3 that the petitioner was the victim of an extortion attempt, the evidence in the record does not support the petitioner’s victimization under CPC § 324. In his January 2006 affidavit, the petitioner stated that neither [IDENTIFYING INFORMATION REDACTED BY AGENCY] nor his associate threatened him. Similarly, [IDENTIFYING INFORMATION REDACTED BY AGENCY], while noting that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had threatened others if they did not pay him, stated that the petitioner was not extorted. Accordingly, USCIS does not consider the petitioner to have been the victim of an attempted extortion.

More importantly, there is no evidence that the petitioner was a victim of [IDENTIFYING INFORMATION REDACTED BY AGENCY] fraudulent schemes as claimed by the certifying official. According to the Application for Asylum (Form I-589) that the petitioner signed on January 14, 2003, the preparer is listed as [IDENTIFYING INFORMATION REDACTED BY AGENCY] not [IDENTIFYING INFORMATION REDACTED BY AGENCY]. Neither the certifying official nor the petitioner has presented evidence that [IDENTIFYING INFORMATION REDACTED BY AGENCY] was an associate of [IDENTIFYING INFORMATION REDACTED BY AGENCY] and [IDENTIFYING INFORMATION REDACTED BY AGENCY] name does not appear on the Felony Complaint Warrant in the record. Accordingly, USCIS concludes that the Form I-918 Supplement B does not establish the petitioner as a victim of[IDENTIFYING INFORMATION REDACTED BY AGENCY]

*4 Even if the petitioner were to submit evidence of the association between [IDENTIFYING INFORMATION REDACTED BY AGENCY] and [IDENTIFYING INFORMATION REDACTED BY AGENCY] he would remain ineligible for U nonimmigrant status. On appeal, counsel states that[IDENTIFYING INFORMATION REDACTED BY AGENCY] suborned the petitioner to commit perjury by filing an asylum application on the petitioner’s behalf that misrepresented the facts and the law.
Under the California Penal Code, perjury is defined as follows:
(a) Every person who, having taken an oath that he or she will testify, declare, deponent, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.


[IDENTIFYING INFORMATION REDACTED BY AGENCY] or his associate may have committed perjury under C.P.C. § 118 when he completed and signed the petitioner's asylum application under penalty of perjury knowing it to contain material and false information. However, to establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must also demonstrate that [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(i).

The evidence in the record demonstrates that the petitioner was harmed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] in that he was the victim of notario fraud committed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] The evidence does not demonstrate, however, that [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed perjury to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or that he committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system.

Apart from [IDENTIFYING INFORMATION REDACTED BY AGENCY] filing of the asylum application, the relevant evidence does not indicate that any of [IDENTIFYING INFORMATION REDACTED BY AGENCY] subsequent dealings with the petitioner involved perjury. The record shows that [IDENTIFYING INFORMATION REDACTED BY AGENCY] filed the asylum application a few months after his first meeting with the petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by [IDENTIFYING INFORMATION REDACTED BY AGENCY] the exploitation resulted from notario fraud and [IDENTIFYING INFORMATION REDACTED BY AGENCY] subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that [IDENTIFYING INFORMATION REDACTED BY AGENCY] perjury offense was accomplished, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U) of the Act. 4

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (ii) of the Act. He, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(ii)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility). In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The appeal is dismissed and the petition remains denied.
Footnotes

1 "Every person who attempts, by means of any threat . . . to extort money or other property from another is punishable[.]" West's Ann.Cal.Penal Code § 524 (2012).

2 California v. Fernández, Superior Court of California, County of Orange, Center Justice Center, No 03CF0760 (Mar. 23, 2006).

3 "Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured." West's Ann.Cal.Penal Code § 127 (2012).

4 Although grand theft (CPC § 427) is listed on the Form I-918 Supplement B, it is not a qualifying crime or substantially similar to any such crime enumerated at section 101(a)(15)(U)(ii) of the Act.
2011 WL 10845083 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
September 14, 2011

*1 DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.


The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner's representative submits a brief and a psychological evaluation of the petitioner, her husband and their children.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:
(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.[]"
*2 “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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1991 without inspection, and was placed into removal proceedings before the Los Angeles, California Immigration Court in 2002, after her spouse’s asylum application (Form I-589) was referred to an immigration judge.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on October 14, 2009. On May 6, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of her claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that she was a victim of a qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, the petitioner contends through her representative that she is eligible for U nonimmigrant classification because she was the victim of notario fraud, which is similar to the qualifying crime of perjury or solicitation to commit perjury.

The Claimed Criminal Activity

*3 According to the petitioner, in 1993 her husband was working in a sewing factory whose owner brought in lawyers to fix the employees’ immigration status. The petitioner stated that she and her husband started a payment plan with one of the lawyers to file the necessary paperwork to obtain legal status in the United States, but when they finished paying, they
realized that the lawyer had filed an asylum application instead of an employment-based application. The petitioner recounted that she and her husband were unable to speak with the lawyer by telephone, and when they went to the lawyer’s office it was empty and there was a sign to indicate that the lawyer had moved. The petitioner maintained that she and her husband have hired other attorneys to help legalize their immigration status, but they have had no success.

The Petitioner is Not a Victim of Perjury or Any Other Qualifying Criminal Activity

In support of her I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (From I-918 Supplement B), signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] of the [IDENTIFYING INFORMATION REDACTED BY AGENCY] The certifying official listed the criminal act at Part 3.1 as perjury, but did not provide a statutory citation for the criminal activity at Part 3.3. At Part 4, the certifying official indicated that the petitioner did not possess information concerning the criminal activity, that she had not been, was not being, and was not likely to be helpful in the investigation or prosecution of the criminal activity, and that she had unreasonably refused to provide assistance in the criminal investigation or prosecution. The certifying official indicated at Part 4.5 that the statute of limitation for fraud expired 14 years ago, and the petitioner has not been helpful to law enforcement authorities considering the 17-year delay in reporting the crime.

On appeal, the petitioner’s representative states that fraud is a qualifying crime in this matter because the purported lawyer solicited the petitioner and her husband to commit perjury by filing an asylum application on their behalf. The petitioner’s representative argues that even if the petitioner was not a victim of perjury, notario fraud should be recognized as a qualifying crime because it would increase the incentive for its victims to come forward, which would decrease its occurrence over time. The petitioner’s representative points out that the Executive Office for Immigration Review (EOIR) considers notario fraud a serious offense and has dedicated funds to a fraud and abuse prevention program.

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the lawyer procured her to commit perjury, and if so, that he did it, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. §214.14(a)(14)(i).

The evidence in the record does not demonstrate that the petitioner perjured herself. The petitioner was considered a derivative on her husband’s asylum application; she did not sign an asylum application and she did not testify that the lawyer had her sign a blank immigration form. Thus, the evidence does not establish that the petitioner perjured herself by signing an application for an immigration benefit that contained false information.

Even if the evidence did demonstrate that the lawyer suborned the petitioner to commit perjury, she has not demonstrated that the perjury was done to avoid or frustrate efforts by law enforcement personnel to bring the lawyer to justice for other criminal activity, or as a means to further his abuse or exploitation over the petitioner through manipulation of the legal system. The certifying official indicates that no investigation of the lawyer was ever undertaken regarding the fraud he committed against the petitioner because the petitioner did not report the fraud until 17 years after its occurrence when the statute of limitations had run out. As the lawyer with whom the petitioner consulted was never investigated or charged with a crime based on the fraud he had committed against her and the record lacks evidence that the lawyer was engaged in any other criminal activity at the time, there is no basis to conclude that suborning the petitioner to commit perjury was done to avoid or frustrate any ongoing law enforcement investigation. The record also fails to show that the lawyer committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that the lawyer filed the petitioner’s derivative asylum application shortly after being retained by the petitioner and her husband and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by the lawyer, the exploitation resulted from the initial fraud, not from further perjury under.

The petitioner’s representative states on appeal that notario fraud should be included in the list of qualifying crimes enumerated at section 101(a)(15)(U)(iii) of Act. U.S. Citizenship and Immigration Services (USCIS) lacks the authority to change the statutory list of qualifying crimes at section 101(a)(15)(U)(iii) of Act; however, both the statute and the regulation at 8 C.F.R. § 214.14(a)(9) allow for “any similar activity” to be considered a qualifying crime when the nature and elements
of a particular criminal offense are substantially similar to one of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Here, the petitioner has not demonstrated that the criminal offense of which she was a victim, notario fraud, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including perjury or solicitation to commit perjury. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria

5 The petitioner’s failure to establish that she was the victim of qualifying criminal activity prevents her from meeting any of the statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)-(IV) of the Act. In addition, the petitioner has not complied with section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), which requires: a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

In this case, the certifying official indicated that the petitioner was not helpful in the investigation or prosecution of the criminal activity. Accordingly, the petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office

2011 WL 10845083 (DHS)
2011 WL 9159340 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
September 15, 2011

*1 DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


The director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) - (IV) of the Act. On appeal, counsel submits a brief.

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[]
The regulation at 8 C.F.R. § 214.14(a)(14) provides the following definition pertinent to the U nonimmigrant classification: *2 Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico whose application for cancellation of removal pursuant to section 240A(b)(1) of the Act was denied by an immigration judge. The Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on August 3, 2007, and the Ninth Circuit Court of Appeals dismissed a petition for review on April 25, 2008.

The petitioner filed the instant Form I-918 U petition on December 15, 2008. On December 11, 2009, the director issued a Request for Evidence (RFE) to obtain additional evidence relevant to the statutory eligibility grounds at section 101(a)(15)(U)(i) of the Act. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition, and the petitioner timely appealed.

On appeal, counsel maintains that the petitioner was the victim of qualifying criminal activity or activity similar to the crimes enumerated at section 101(a)(15)(U)(iii) of the Act, and that he was helpful in the investigation of the criminal activity. Counsel states that the fraud charges that were brought against [IDENTIFYING INFORMATION REDACTED BY AGENCY] arose from the perjury, extortion and theft that [IDENTIFYING INFORMATION REDACTED BY AGENCY] enacted on the petitioner. According to counsel, [IDENTIFYING INFORMATION REDACTED BY AGENCY] obtained the petitioner's money through false pretenses by filing an asylum application on the petitioner's behalf without letting the petitioner read the application so that the petitioner would know what he was signing. Counsel also states that [IDENTIFYING INFORMATION REDACTED BY AGENCY] used the immigration system to manipulate the petitioner and that the petitioner was threatened with deportation if he did not pay the money demanded of him by [IDENTIFYING INFORMATION REDACTED BY AGENCY]. Counsel states further that [IDENTIFYING INFORMATION REDACTED BY AGENCY] caused the petitioner to perjure himself since he signed his asylum application under penalty of perjury. Counsel maintains that the petitioner suffered substantial mental abuse and requests that the AAO review the record in its entirety and take into consideration the totality of the petitioner's circumstances when rendering a decision on the petition.

The Claimed Criminal Activity

*3 The petitioner claimed in his November 29, 2007 declaration that he was the victim of qualifying criminal activity because he went to [IDENTIFYING INFORMATION REDACTED BY AGENCY] so that he and his wife could gain legal status in the United States. The petitioner stated that both he and his wife paid approximately $4,000 to [IDENTIFYING INFORMATION REDACTED BY AGENCY] which filed asylum applications on his and his wife's behalf, which resulted in them being placed in immigration proceedings. The petitioner stated that he found out that [IDENTIFYING INFORMATION REDACTED BY AGENCY] had deceived them when he learned that people who worked for [IDENTIFYING INFORMATION REDACTED BY AGENCY] had been detained because of fraud. He noted that he was able to recover some of their original documents and began looking for another attorney. In a subsequent statement dated February 25, 2010, the petitioner added an owner of [IDENTIFYING INFORMATION REDACTED BY AGENCY] old him and his wife that they would be able to obtain legal residency in the United States because they had been in the United States for over ten years. The petitioner indicated that this owner told him that if he did not make the monthly payments his case would be closed and he would be reported to immigration for deportation.

Analysis

When initially filing his Form I-918 U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY], Assistant District Attorney, [IDENTIFYING INFORMATION REDACTED BY AGENCY], California. This form listed the criminal acts of which the petitioner was a victim at Part 3.1 as extortion, perjury, grand theft and solicitation to commit perjury or extortion. [IDENTIFYING INFORMATION REDACTED BY AGENCY] provided the statutory citations for the criminal activity at Part 3.3 as California Penal Code sections 487.1 (grand theft); 518 (extortion); 664 (attempt to commit a crime); and 127 (subornation of perjury). At Parts 3.5 and 3.6, [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not describe either the criminal activity being investigated or prosecuted, or any known or documented injury to the petitioner. Parts 3.5 and 3.6 referred to an "attached U-Visa Certification Form"; however, no additional certification by [IDENTIFYING INFORMATION REDACTED BY AGENCY] or his office was attached; only the petitioner's November 29, 2007 declaration was attached.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted: a "Docket Report" from the [IDENTIFYING INFORMATION REDACTED BY AGENCY] County Superior Court regarding the indictment of one of [IDENTIFYING INFORMATION REDACTED BY AGENCY] owners; one article from [IDENTIFYING INFORMATION REDACTED BY AGENCY] and two articles from the [IDENTIFYING INFORMATION REDACTED BY AGENCY] about [IDENTIFYING INFORMATION REDACTED BY AGENCY] and a Press Release from the Orange County District Attorney's Office, which described the indictment of the owners of [IDENTIFYING INFORMATION REDACTED BY AGENCY].

*4 USCIS has sole discretion to determine the evidentiary value of a Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4). Although the crimes of extortion and perjury are listed at section 101(a)(15)(U)(ii) of the Act as qualifying crimes and [IDENTIFYING INFORMATION REDACTED BY AGENCY] indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of those two crimes (as well as grand theft), he failed to provide any statements describing the criminal activity being investigated or prosecuted by his office and the petitioner's involvement in, victimization and injury from, such criminal activity. Without such information from the certifying agency, the Form I-918 Supplement B is deficient. The record does not establish that qualifying criminal activity was committed against the petitioner, that the certifying agency investigated or prosecuted any qualifying criminal activity committed against the petitioner, or that the petitioner suffered direct and proximate harm as a result of such victimization.

The articles and the Press Release from the [IDENTIFYING INFORMATION REDACTED BY AGENCY] County District Attorney's Office show that the owners of [IDENTIFYING INFORMATION REDACTED BY AGENCY] were indicted for grand theft and conspiracy, but the documents do not name the petitioner or otherwise establish that he was a client of [IDENTIFYING INFORMATION REDACTED BY AGENCY] and a victim of extortion or perjury due to the company's fraudulent schemes. Although the petitioner stated that he was threatened with deportation if he did not pay the fees established by [IDENTIFYING INFORMATION REDACTED BY AGENCY] the certifying agency also does not indicate that any threats of deportation against the petitioner were made. The petitioner, therefore, has not met the definition of "victim of qualifying crime or criminal activity" at 8 C.F.R. § 214.14(a)(14) and cannot establish his eligibility under section 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner has not demonstrated that the deception committed against him constituted qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsection 101(a)(15)(U)(i) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above stated reasons.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew

2011 WL 10878017 (INS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
October 31, 2011

*1 DISCUSSION: The Director, Vermont Service Center, denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


The director denied the petition because the petitioner did not submit the requisite Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) containing an original signature and did not establish that she was the victim of a qualifying crime or criminal activity. See Director's Decision, dated October 26, 2010. On appeal, counsel submits a brief, a new Form I-918 Supplement B and copies of documentation already in the record.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) of the Act if:
(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage;peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion;
manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

*2 Further, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Facts and Procedural Posture

The petitioner is a native and citizen of Mexico who, on May 15, 1999, appeared at the Brownsville, Texas port of entry and was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) on May 17, 1999. On the Form I-918 U petition, the petitioner did not indicate her date or manner of entry into the United States.

On May 7, 2008, the petitioner filed the instant Form I-918 U petition. On January 29, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On October 26, 2010, after considering the evidence of record, including counsel’s response to the RFE, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that she has made all possible efforts to obtain an original signature on the law enforcement certification and asserts that the petitioner was the victim of a crime enumerated at section 101(a)(15)(U)(iii) of the Act and the individual of whom the petitioner was a victim committed fraud and obstruction of justice. In later correspondence, counsel indicates that she had obtained a new Form I-918 Supplement B containing an original signature and submits a facsimile copy of the Form I-918 Supplement B.

Analysis

Section 214(p)(1) of the Act provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Further, the regulations governing the filing of petitions with U.S. Citizenship and Immigration Services (USCIS) provide for the general requirement that all petitions must contain a handwritten signature. 8 C.F.R. § 103.2(a)(2).¹

On appeal, the petitioner through counsel submits a new Form I-918 Supplement B, dated March 10, 2011; however, this Form I-918 Supplement B is a facsimile copy only and does not contain an original handwritten signature. As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, she cannot establish her helpfulness to law enforcement in the investigation or prosecution of qualifying criminal activity, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. For this reason alone, the petition may not be approved.

*3 Even if USCIS were to accept the Form I-918 Supplement B submitted on appeal, the petitioner has failed to establish that she was a victim of a qualifying crime. At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal act of which the petitioner was a victim as fraud, and noted the statutory citation for the crime at Part 3.3 as “Texas Government Code 406.017(2) Representation as Attorney.” When describing the criminal activity at Part 3.5, the certifying official stated that the petitioner was an employee of the unauthorized practice of law by notaries.

Section 406.017 of the Texas Government Code concerns “Representation as Attorney,” and provides, in pertinent part:

(a) A person commits an offense if the person is a notary public and the person:

***

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

***


The particular crime that was certified is not specifically listed as a qualifying crime at section 101(a)(15)(U)(ii) 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." 8 C.F.R. § 214.14(a)(9).

Counsel states that if one looks at the facts and circumstances of petitioner’s victimization, the crime most closely related to notario fraud in this matter is obstruction of justice under section 1505 of Title 18 of the U.S. Code (USC). However, the proper inquiry is not an analysis of the factual details of the criminal activity, but a comparison of the nature and elements of authorized representation as an attorney under Texas Government Code § 406.017(a)(2) to obstruction of justice under 18 U.S.C. § 1505.

Under 18 USC § 1505, obstruction of justice occurs when:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.]

*4 18 U.S.C. § 1505

No element of unauthorized representation as an attorney under Texas Government Code § 406.017(a)(2) is similar to obstruction of justice under 18 U.S.C. § 1505. The Texas statute at hand punishes notary publics specifically who solicit or accept payment for the preparation of documents or represent individuals in judicial or administrative proceedings. In contrast, obstruction of justice under 18 U.S.C. § 1505 punishes any person, not just a notary public, who obstructs an antitrust investigation or any pending proceeding before a United States department or agency or congressional inquiry. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that any enforcement authority investigated an obstruction of justice crime.

Conclusion

The petitioner has failed to submit the certification required by section 214(p)(1) of the Act. She has also failed to demonstrate that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(ii) of the Act.
failure to establish that he was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(I)(I) - (IV) of the Act.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.

Perry Rhew  
Chief  
Administrative Appeals Office

Footnotes

1. USCIS determines, in its sole discretion, the evidentiary value of the evidence submitted in support of a Form I-918 U petition, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4).
2015 WL 8472220 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
February 4, 2015

*1 DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.


The director denied the petition because the petitioner did not establish that: he was the victim of qualifying criminal activity; he suffered substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal activity occurred in the United States. On appeal, the petitioner submits a brief.

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage;peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion;

manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1551); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

*2 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)(ii) 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 eligibility requirements for U nonimmigrant classification are further 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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity . . . ;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

Facts and Procedural History

*3 The petitioner is a native and citizen of Mexico who claims he entered the United States on or about March of 2003, without being inspected, admitted, or paroled. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on December 10, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On November 29, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement
certification was a qualifying crime. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that he was a victim of fraud which is similar to extortion and obstruction of justice, qualifying crimes.

**Claimed Criminal Activity**

In his declaration, the petitioner recounted that after he was placed in removal proceedings, he contacted [IDENTIFYING INFORMATION REDACTED BY AGENCY] to assist him with his immigration case. The petitioner stated that after he paid [IDENTIFYING INFORMATION REDACTED BY AGENCY] $2,500 to represent him, he learned that [IDENTIFYING INFORMATION REDACTED BY AGENCY] was either suspended or disbarred from the practice of law. According to the petitioner, he missed his court hearing because of [IDENTIFYING INFORMATION REDACTED BY AGENCY] and now he worries a lot, struggles with stress, and does not want to eat or sleep.

The Form I-918 Supplement B that the petitioner submitted was signed by Judge [IDENTIFYING INFORMATION REDACTED BY AGENCY] General Session Court Division, Davidson County, Tennessee (certifying official) on July 6, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as “other: fraud.” In Part 3.3, the certifying official referred to “Intentional Misrepresentation; Unfair or Deceptive Act (TCA 47-18-104)” as the criminal activity that was investigated or prosecuted. At Parts 3.5 and 4.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner “was a victim of fraud by former attorney [IDENTIFYING INFORMATION REDACTED BY AGENCY] (Now disbarred) . . . [and] appeared in civil court to testify about the fraud and civil damages he has incurred . . .”

**Analysis**

We conduct appellate review on a de novo basis. Based on the evidence in the record, we find no error in the director’s decision denying the petitioner’s Form I-918 U petition.

**Unfair or Deceptive Acts or Practices Under Tennessee Law is not Qualifying Criminal Activity**

The Form I-918 Supplement B indicates that the crime investigated or prosecuted was Tennessee Code § 47-18-104, unfair or deceptive acts or practices. This crime is not specifically listed as a qualifying crime under section 101(a)(15)(U)(iiii) 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.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the unfair or deceptive acts or practices offense 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 statute in question.

*4 On appeal, the petitioner contends that unfair or deceptive acts or practices is substantially similar to the qualifying crimes of extortion and obstruction of justice. Section 47-18-104 of the Tennessee Code prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce” and lists fifty such acts or practices. TENN. CODE ANN. § 47-18-104. Under Tennessee law, “[a] person commits extortion who uses coercion upon another person with the intent to: (1) Obtain property, services, any advantage or immunity; (2) Restrict unlawfully another’s freedom of action; or (3)(A) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity . . .” TENN. CODE ANN. § 39-14-112. Obstruction of justice is addressed in Title 39, Chapter 16, Part 6 of the Tennessee Code. The petitioner contends on appeal that obstruction of justice is a broad category of conduct includes resisting or evading arrest, obstruction of service of a legal writ or process, compounding a crime, escape from a penal institution, and failure to appear in court when required.

No elements of unfair or deceptive acts or practices under § 47-18-104 of the Tennessee Code are similar to either extortion under § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6. The petitioner has not specified which of the fifty unfair or deceptive acts or practices listed in § 47-18-104 is substantially similar to a qualifying crime. Rather, the petitioner claims on appeal that this case of “notario fraud” implicates extortion and obstruction of justice, and that the spirit
of the U nonimmigrant status is to protect vulnerable immigrant communities from crimes such as notario fraud. While the record shows the petitioner submitted an affidavit in the State’s case against [IDENTIFYING INFORMATION REDACTED BY AGENCY] nonetheless, the standard for inclusion as qualifying criminal activity is that the crime investigated or prosecuted is "substantially similar" to one of the enumerated crimes, and the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of § 47-18-104 of the Tennessee Code, unfair or deceptive acts or practices, is substantially similar to either extortion under Tennessee Code § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6 of the Tennessee Code. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the only crime certified at Part 3.3 of the Form I-918 Supplement B was unfair or deceptive acts or practices. The evidence of record does not demonstrate that the crime of extortion, obstruction of justice, or any other qualifying crime was investigated or prosecuted. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

*5 As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, users or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

Jurisdiction

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

The petitioner has failed to establish that: he was the victim of qualifying criminal activity; he suffered substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal activity occurred in the United States. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.
Ron Rosenberg
Chief
Administrative Appeals Office

Footnotes

Note 1. According to the petitioner's June 26, 2009 affidavit, [IDENTIFYING INFORMATION REDACTED BY AGENCY] who the certifying official referenced in the Form I-918 Supplement B, was an employee of [IDENTIFYING INFORMATION REDACTED BY AGENCY]
MATTER OF U-G-E-
MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION
PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

June 24, 2016

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 the victim of qualifying criminal activity, suffered substantial abuse as a result of the victimization, possessed information concerning qualifying criminal activity, was helpful in the investigation or prosecution of qualifying criminal activity, and that qualifying activity occurred in the United States. We dismissed the Petitioner’s subsequent appeal. We concluded that the record neither established that the Petitioner was the victim of qualifying criminal activity, nor that he met the remaining eligibility criteria.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. He claims that we erroneously required that he establish his eligibility by a preponderance of the evidence, and that he meets all of the eligibility criteria under the more expansive standard of proof applicable in this case, “any credible evidence.” The Petitioner claims that he is a victim of qualifying criminal activity because the certified crimes, fraud and the unauthorized practice of law, are substantially similar to the qualifying crime of obstruction of justice.

Upon review, we will deny the motion.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, entered the United States without inspection, admission, or parole. He subsequently filed the Form I-918, Petition for U Nonimmigrant Status, and Form I-918 Supplement B, U Nonimmigrant Status Certification, claiming that he was the victim of a fraudulent immigration scheme, and assisted in the investigation and prosecution of the criminal activity. The Form I-918 Supplement B indicates that the Petitioner was the victim of fraud, the criminal activity investigated or prosecuted was the unlawful practice of law and fraud, and the Petitioner suffered financial loss as a result of the criminal activity. The Director determined that the certified crimes were neither qualifying criminal activity nor substantially similar to qualifying criminal activity, and that the Petitioner did not meet the remaining eligibility criteria,
which are based on a threshold finding of qualifying criminal activity. On appeal, the Petitioner claimed that the criminal activity was substantially similar to the qualifying crime of obstruction of justice. In our decision dismissing the appeal, which we incorporate here, we affirmed the Director's decision. We concluded that the certified criminal activities, the unlawful practice of law and fraud, were not substantially similar to any qualifying criminal activity, and that the Petitioner did not meet the remaining eligibility criteria. The Petitioner timely filed the motion to reconsider.

III. ANALYSIS

*2 Based on the evidence in the record, as supplemented on motion, the Petitioner has not overcome our previous decision.

A. The Correct Burden of Proof Is Preponderance of the Evidence

On motion, the Petitioner asserts that we must weigh the evidence under the ""any credible evidence" standard, and that when we apply the correct burden of proof, he meets the eligibility criteria. Section 214(p)(4) of the Act provides:

In acting on any petition filed under this subsection, the consular office or [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(4), provides, in part:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS.

While the Petitioner is correct that we must consider any credible evidence relevant to the petition, the evidentiary requirement is not equivalent to the Petitioner's burden of proof. See 8 C.F.R. § 214.14(a)(4). Under Matter of Chowathe, 25 I&N Dec. 369 (AAO 2010), a precedent decision, the burden of proof in administrative immigration proceedings is on a petitioner to demonstrate eligibility by a preponderance of the evidence, except as otherwise provided. Here, the statutory and regulatory requirement that we consider any credible evidence when adjudicating U visa petitions does not modify the Petitioner's burden of establishing his eligibility by a preponderance of the evidence.

The Petitioner contends that any credible evidence is a recognized evidentiary standard of the Environmental Protection Agency (EPA). The Petitioner does not explain how the EPA's adoption of the Credible Evidence Rule, 62 Fed. Reg. 8314 (February 24, 1997), which allows citizens to use any credible evidence when filing a lawsuit, is relevant in these proceedings. Nor does he show that the EPA's rule allowing any credible evidence to be submitted in a lawsuit usurps the citizen complainant's burden of proof in lawsuits involving the EPA.

B. The Certified Criminal Activity Is Not Substantially Similar to Qualifying Criminal Activity

The certifying official identified fraud and the unauthorized practice of law, specifically Oklahoma Statutes Annotated title 21 section 1541.2 (false statements or pretenses, loss greater than $500.00), and 8 C.F.R. § 292.2 (organizations and accredited representatives), as the crimes certified on the Form I-918 Supplement B, neither of which are listed as qualifying crimes 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." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of these offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. Id. The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

*3 In our previous decision, we reviewed the specific statutes cited by the certifying official on the Form I-918 Supplement B, and determined that no elements of Okla. Stat. Ann. tit. 21, section 1541.2 were similar to obstruction of justice under 18 U.S.C. § 1505. We concluded that the Oklahoma statute investigated in this case, Okla. Stat. Ann. tit. 21 § 1541.2 (West 2011), involved cheating, defrauding, or obtaining property through the use of trick or deception, or false representation, and did not involve willfully withholding, misrepresenting, altering, or by other means falsifying any information in a
government proceeding or the use of threats or force -- essential elements in the federal obstruction of justice statute under 18 U.S.C. § 1505. We further indicated that 8 C.F.R. § 292.2 is not a criminal statute but a regulation setting forth procedures under which individuals and organizations may become authorized to represent foreign nationals in immigration proceedings before USCIS, and was neither a qualifying criminal activity nor substantially similar to a qualifying criminal activity.

On motion, the Petitioner contends that the immigration fraud scheme perpetrated against him and others is substantially similar to obstruction of justice, in that the perpetrator was obstructing the administrative processes of USCIS through the unauthorized practice of law and deceit of the immigrant community for personal gain. As we noted in our previous decision, the certifying official did not indicate on the Form I-918 Supplement B that obstruction of justice was investigated or prosecuted, but rather listed the offense investigated in Part 3 as “other: fraud.” We do not look at the underlying facts of the proceedings to determine whether such acts constitute obstruction of justice or other qualifying activity, but at whether the certified crime or crimes are qualifying crimes or substantially similar to qualifying criminal activity.

The Petitioner asserts that we should consider the evidence under an expansive burden of proof and interpret the statutory list of qualifying crimes broadly as general categories of criminal behavior. The Petitioner contends that protecting vulnerable aliens from immigration scams is exactly the kind of criminal behavior that the nonimmigrant classification was designed to address, and that Congress intended to encourage undocumented persons in the United States who are the victims of crime, like himself, to report crime and to cooperate with law enforcement in the investigation and prosecution of crime. The Petitioner claims that we erroneously interpreted the statute by applying the more rigorous preponderance of the evidence standard. The Petitioner does not submit precedent decisions or USCIS policy in support of his assertions. Although he has submitted credible evidence that he was a victim of immigration fraud, the preponderance of the evidence does not show that the certified criminal offenses are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

The Petitioner has, therefore, not established that he is the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. The Petitioner Has Not Suffered Substantial Abuse Resulting from Qualifying Criminal Activity

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

D. The Petitioner Does Not Possess Information Concerning Qualifying Criminal Activity

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

E. The Petitioner Has Not Been Helpful to Authorities Investigating Qualifying Criminal Activity

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that he has been, is being, or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

F. Qualifying Criminal Activity Did Not Occur within the Jurisdiction of the United States

As the Petitioner does not establish that he was the victim of qualifying criminal activity, he has also not established that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

The Petitioner does not cite to precedent decisions to establish that our prior decision was based on an incorrect application of
law or USCIS policy and does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. See 8 C.F.R. § 103.5(a)(4).

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 motion to reconsider is denied.
2016 WL 8315805 (DHS)
Non-Precedent Decision of the Administrative Appeals Office
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Vermont Service Center

MATTER OF D-M-C-B-
APPEAL OF VERMONT SERVICE CENTER DECISION
PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

November 18, 2016

*1 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 she was a victim of qualifying criminal activity and therefore had not demonstrated the remaining statutory criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(II)-(IV) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner claims that she was the victim of the qualifying criminal activity of extortion and submits a brief and a declaration along with additional evidence.

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: . . . extortion; . . . 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 Chevathe, 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

*2 The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (U petition) and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), claiming to be the victim of extortion. 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

The Petitioner claims that the record demonstrates that she was a victim of extortion or criminal activity that is substantially similar to one of the qualifying crimes. Upon our de novo review of the record, the Petitioner has not demonstrated that she is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, namely, extortion. Our inquiry focuses on whether the U petition, and the record as a whole, establishes that the certifying agency detected, investigated, or prosecuted a qualifying crime. Here, we conclude that the record demonstrates that the certifying agency detected, investigated, or prosecuted the offense of impersonating a federal officer.

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), dated May 22, 2013, signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] Lieutenant/Investigations, [IDENTIFYING INFORMATION REDACTED BY AGENCY] Illinois, Police Department (certifying official). At part 3.3 of the Supplement B, the certifying official cited to Title 18, U.S. Code, section 912, corresponding to the offense of impersonation of federal agent, as the criminal activity that was investigated or prosecuted. At part 3.1, the certifying official asserted that the criminal activity committed against the Petitioner involved or is similar to the qualifying crime of “Extortion.” At part 3.5, which asks to briefly describe the criminal activity being investigated, the certifying official indicated that the Petitioner and “several other victims were being extorted” by the suspect who “posed as a Federal Immigration Official and solicited currency from the victims and promised to help them in their quest to obtain citizenship.”

The record of proceedings includes a police report that under Incident Description states “Law Enforcement Impersonation” and identifies the victim as “Immigration and Naturalization Service.” An accompanying narrative labels the reporting officer’s investigation as “Law Enforcement Impersonation.” The narrative states that the Petitioner and another person reported they had paid the suspect, who had identified himself as an “INS agent” and said he would help with their immigration status. The record of proceedings also includes documents showing the suspect was charged and convicted in violation of Title 18 U.S.C. section 912 for impersonating a federal official.

*3 With the appeal the Petitioner submits an updated Supplement B, dated August 4, 2015, in which a certifying official amended part 3.3 to include intimidation under 720 Illinois Compiled Statutes (ILCS) 5/12-6. The Petitioner also submits a United States Court of Appeals, Seventh Circuit, decision that indicates Illinois does not use the term “extortion” in its criminal code but rather describes extortion under the heading of “intimidation.”

The issue before us is whether extortion, a qualifying criminal activity, was actually detected and investigated. However, before we reach this specific issue, we must first discuss the regulation at 8 C.F.R. § 214.14(c)(2)(i), which requires that at
the time of filing, a U petition “must include” as initial evidence a Supplement B “signed by a certifying official within the six months immediately preceding the filing of Form I-918 (emphasis added).” The Petitioner submitted two Supplements B; the first one accompanied the filing of the U petition, and the second one the Petitioner submitted in response to the Director’s request for evidence (RFE). The Supplement B that the certifying official executed almost two years after the filing of the U petition does not conform to the regulation at 8 C.F.R. § 214.14(c)(2)(i). Although we are not required to consider this second one because it was not properly executed in accordance with the governing regulation, we will nevertheless address both Supplements B in our analysis, as the Director did in her decision.

The second Supplement B signed in 2015 indicates that the crime of intimidation under 720 ILCS 5/12-6 was investigated or prosecuted; however, neither the Petitioner nor the certifying official provided any explanation for the amendment this part of Supplement B more almost two years after the initial one had been completed and submitted. A Supplement B should reflect the relevant and specific details of the crimes that were detected, investigated, or prosecuted, which come from the reports taken at the scene by responding officers or investigators, and other pertinent evidence. See U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53024 (Sept. 17, 2007). The certifying official did not include any statement or criminal investigative records to identify or explain any deficiency in the initial Supplement B and to support the inclusion of a statutory citation of intimidation under Illinois law in the second Supplement B. This is significant, particularly because the incident report only identified the offense of law enforcement impersonation as committed against the Petitioner and did not indicate that law enforcement officials also detected, investigated, or prosecuted intimidation. Because the citation to 720 ILCS 5/12-6 at part 3.3 is unsupported by relevant evidence, it carries no weight in our determination. See section 214(p) of the Act (we determine, in our sole discretion, the value of the evidence in the record of proceedings); see also U rule at 53024 (we do not consider the Supplement B to be conclusory evidence that a petitioner has met the eligibility requirements; we use it “in the course of adjudicating whether the eligibility requirements have been met”).

*4 On appeal, the Petitioner contends that the record establishes that she was a victim of extortion, a qualifying crime. She states that on the Supplement B, the certifying official marked that she was a victim of extortion, that the certifying official wrote that she and other victims were being extorted, and that extortion was the intended qualifying crime. The Petitioner refers to the U Visa Law Enforcement Certification Resource Guide regarding certifying agencies, notes that U visa regulations provide that investigation refers to detection, and cites the Black’s Law Dictionary, 2d Ed. definition of “detection” to support her argument that the certifying agency detected and investigated extortion even though the suspect was charged and prosecuted for impersonating a federal officer.

As defined in 8 C.F.R. § 214.14(a)(14), a “victim” for purposes of U classification is a petitioner who has suffered harm as a result of the commission of qualifying criminal activity. Here, although the certifying official indicated the criminal activity investigated was similar to extortion at part 3.1 of the Supplement B and noted generally at part 3.5 that the Petitioner and others were extorted, it did not cite to a corresponding statute for that offense in part 3.3 of the first Supplement B as the criminal offense that was actually investigated or prosecuted. The certifying official also references attempts to extort money from the Petitioner, but as noted, the certifying official listed only a statute for impersonation of a federal officer as the criminal activity being investigated or prosecuted and the accompanying police report does not support that an extortion crime was detected. The certifying official’s completion of part 3.1 is not conclusive 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 rule at 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Our inquiry focuses on whether the Supplement B, and the record as a whole, establishes that the certifying agency detected, investigated, or prosecuted a qualifying crime. Here the record as a whole demonstrates that the crime of impersonating a federal officer was detected and investigated.


According to 18 U.S.C.A. § 912:
§ 912. Officer or employee of the United States
Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both.

The Petitioner contends that police reports, court documents, and the facts of her case support that the activity against her meets the elements of extortion under 18 U.S.C. § 1951 in that the suspect knowingly took money, that she feared him, that she gave money because of extortion, that the suspect held himself out as a federal agent, and that he held himself out to have authority in all states. The Petitioner further maintains that the nature and elements of the conduct committed against her parallel the definition of extortion in the Model Penal Code, U.S. Code, and Illinois intimidation statute.

Extortion is defined under 18 U.S.C. as “obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” (West 2016). The crime of impersonating a federal official is not substantially similar to extortion. Extortion under Title 18 requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear, or under color of official right.” Impersonating a federal official does not contain similar elements of force, fear, or under color of official right. The general situation for a charge under color of official right within 18 U.S.C. § 1951 is a public official trading official actions where he or she has actual authority in exchange for the payment of money.

The Petitioner contends that the nature and elements of the conduct committed against her parallels the definition of extortion found in the Model Penal Code. At section 223.4 the Model Penal Code provides that theft by extortion is when a person is guilty of theft if he purposely obtains property of another by threatening to do other actions, which are elements that 18 U.S.C.A. § 912 does not include. Moreover, because the perpetrator was charged under a federal statute, the relevant comparison is to the federal definition of extortion at 18 U.S.C. § 1951, and not the Model Penal Code.

The Petitioner describes the activity committed against her and her resulting fear, which she contends was because of extortion. Although we do not minimize the impact of this event on the Petitioner, our inquiry into whether the Petitioner was the victim of qualifying criminal activity does not rely on an analysis of the factual details underlying the offense that occurred, but rather, a comparison of the nature and elements of the crime that was investigated against one of the qualifying crimes at section 101(a)(15)(U)(ii) of the Act.

The Petitioner also maintains that even if a perpetrator is not charged for a qualifying criminal activity, such activity may occur during the commission of non-qualifying criminal activity. Although a qualifying crime may occur during the commission of a non-qualifying offense, the record must demonstrate that the certifying agency or another law enforcement entity actually detected, investigated, or prosecuted the qualifying criminal activity. As noted, determining whether the crime investigated and prosecuted is substantially similar to one of the enumerated offenses under the Act does not entail a factual inquiry into the underlying facts, but rather, strictly entails a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9).

6 The Petitioner has not met her burden of demonstrating that the crime of which she was a victim was detected, investigated, or prosecuted as extortion, or that the statutes relating to impersonating a federal officer and extortion are substantially similar. Accordingly, she is ineligible for U-1 classification as a victim of qualifying criminal activity.

B. Substantial Physical or Mental Abuse Has Not Been Established

As the Petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she necessarily has also not demonstrated that she 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) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also not established that she possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(ii) of the Act.
D. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she necessarily has also not established that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

E. Jurisdiction of Qualifying Criminal Activity

As the Petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated that she was a victim of qualifying criminal activity. She, therefore, necessarily cannot satisfy the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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 Otieno, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has not been met.

ORDER: The appeal is dismissed.

Footnotes

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).

2 We note that in the RFE, the Director did not inform the Petitioner that a new Supplement B could be submitted as evidence to establish that the Petitioner was the victim of qualifying criminal activity. There is no regulation allowing us to accept a Supplement B in contravention of the regulation, to include one that is signed after the U petition filing date.


2016 WL 831805 (DHS)
IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
March 4, 2010

*1 DISCUSSION: The Director,[IDENTIFYING INFORMATION REDACTED BY AGENCY] Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


The director denied the petition because the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, or that he suffered substantial physical or mental abuse as the result of the commission of qualifying criminal activity. On appeal, counsel submits a brief statement on the Form I-290B, Notice of Appeal or Motion.

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or
solicitation to commit any of the above mentioned crimes[.]

*2 The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of [IDENTIFYING INFORMATION REDACTED BY AGENCY] who states that he last entered the United States in March 1993 without inspection. The petitioner submitted an asylum application in July 2002, and he was placed into removal proceedings when his asylum application was referred to the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Immigration Court. The petitioner remains in proceedings before the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Immigration Court and his next hearing date is scheduled for July 8, 2011.

The petitioner filed the instant Form I-918 U petition on May 2, 2008. On April 26, 2010, the director issued a Request for Evidence (RFE) so that the petitioner could submit evidence establishing that he was the victim of a qualifying crime and that he suffered substantial physical and mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 petition.

On appeal, counsel maintains that although the perpetrator of the crime against the petitioner was convicted of grand theft, the offense was nevertheless substantially similar to the qualifying crime of extortion under [IDENTIFYING INFORMATION REDACTED BY AGENCY] law. Counsel does not address the director’s conclusion that the petitioner did not suffer substantial physical or mental abuse. We affirm the director’s determinations and the appeal will be dismissed, as counsel’s claims fail to overcome the grounds for denial.

The Criminal Activity

In his April 30, 2008 statement that he submitted with the initial Form I-918 U petition filing, the petitioner averred that sometime in 2002, he heard that a notario could assist him in legalizing his status in the United States. The petitioner stated that the notario wanted $5,000 from the petitioner to “file some papers with [U.S. Citizenship and Immigration Services],” and that once he started going to this notario, it was too late to not continue to deal with him. The petitioner alleged that he gave the notario his second payment right before his asylum interview but did not understand what the interview was about. Although he was worried, the petitioner stated that he kept paying the notario. The petitioner stated that he realized that the notario had lied and cheated him after his was placed into removal proceedings before the immigration court, so he refused to make any more payments. The petitioner stated that he reported his experiences with the notario to the [IDENTIFYING INFORMATION REDACTED BY AGENCY] Police Department in 2004, and he spoke with the District Attorney. He also stated that he testified at the notario’s preliminary hearing in Superior Court.¹

*3 When filing his U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was signed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] Deputy District Attorney, [IDENTIFYING INFORMATION REDACTED BY AGENCY] California. The criminal act at Part 3.1 of the form was listed as fraud by false pretenses. Part 3.3 of the form listed the statutory citation for the crime as [IDENTIFYING INFORMATION REDACTED BY AGENCY] Penal Code (C.P.C.) § 487(a). At Part 3.5 of the form, which provides for a brief description of the criminal activity, [IDENTIFYING INFORMATION REDACTED BY AGENCY] wrote:

The perpetrator, [the notario], lied to [the petitioner] about his ability to obtain legal permanent resident status for him, receiving payments from [him] totaling about $3,000.00, while filing documents w/USCIS that could only have the result of propelling [the petitioner] into removal proceedings, without explaining to him that this would occur, and that his chances of prevailing in removal proceedings was extremely small. The perpetrator victimized many undocumented aliens in [IDENTIFYING INFORMATION
REDACTED BY AGENCY]County in the same way.

At Part 3.6,[IDENTIFYING INFORMATION REDACTED BY AGENCY]listed any known injuries to the petitioner as the loss of the money he had paid to the notario and the need for the petitioner to retain an attorney to represent him in removal proceedings. [IDENTIFYING INFORMATION REDACTED BY AGENCY]noted that the petitioner is faced with being removed despite being married to a U.S. citizen.

Theft Under C.P.C. § 487(a) is Not Substantially Similar to the Qualifying Crime of Extortion

The crime of grand theft is not a statutorily enumerated crime 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.” 8 C.F.R. § 214.14(a)(9).

Counsel claims that the crime of grand theft, of which the petitioner was a victim, is substantially similar to the qualifying crime of extortion under C.P.C. § 518. Under [IDENTIFYING INFORMATION REDACTED BY AGENCY]law, theft is defined, in relevant part, as follows:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property ... is guilty of theft.

C.P.C. § 484(a) (West 2011).

Under California law, grand theft is committed “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950) . . . .” (West 2011). Extortion is defined under C.P.C. § 518 as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” C.P.C. § 487(a) (West 2011).

The relevant evidence in this case fails to demonstrate that grand theft is substantially similar to extortion. Extortion under C.P.C. § 518 requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear, or under color of official right.” Theft under C.P.C § 487(a) contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of which the petitioner was a victim is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

Counsel does not address this legal insufficiency on appeal, but rather argues that what happened to the petitioner, in fact, is similar to extortion. Counsel claims the notario created a situation of danger unbeknownst to the petitioner and extracted $3,000 from the petitioner with an intent to extract an additional $2,000 with the explicit or implied threat that if the petitioner did not give the notario the money, the petitioner would lose everything he had and be removed to [IDENTIFYING INFORMATION REDACTED BY AGENCY] Counsel cites a Second Circuit Court of Appeals decision for the proposition that an extortion conviction can be predicated on a fear of economic harm. Counsel also cites a [IDENTIFYING INFORMATION REDACTED BY AGENCY] Supreme Court and two [IDENTIFYING INFORMATION REDACTED BY AGENCY] State Appellate Court decisions regarding the definition of the term “threats” as used to induce the fear requisite to the crime of extortion.

Nothing in the petitioner’s testimony or the relevant evidence in the record indicates that the notario induced the petitioner to give him $3,000 through force, fear or the color of official right. Counsel claims that the notario subjected the petitioner to explicit and implicit threats, but the petitioner himself does not provide details of any explicit or implicit threats that occurred in his dealings with the notario. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner’s burden of proof. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988); Matter of Laurocino, 19 I&N Dec. 1, 3 n.2 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).
The cases cited by counsel also fail to support his claims. The State cases address what constitutes a threat inducing fear under the crimes of extortion and sending threatening letters with an intent to extort money under C.P.C. §§ 518, 523. Flattley v. Mauro, 139 P. 3d 2, (CA 2006); People v. Oppenheimer, 209 Cal. App. 2d 413 (1962); People v. Massengale, 261 Cal. App. 2d 758 (1968) The Second Circuit case affirms that the element of fear in the federal extortion statute, 18 U.S.C. § 1951(b)(2), may be satisfied by putting the victim in fear of economic loss, but that such fear was not demonstrated in that particular case. United States v. Capo, 817 F.2d 947, 951, 952-53 (2d Cir. 1987). Regardless of what constitutes a threat or the element of fear in the federal extortion statutes, the record in this case does not establish that the notario ever threatened the petitioner or otherwise subjected him to extortion.

*5 Even if the petitioner had provided evidence that the notario subjected him to extortion, the record would still be deficient because the law enforcement certification fails to state that the petitioner was the victim of an extortion crime which the County District Attorney's Office was investigating or prosecuting. The qualifying criminal activity must be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated or prosecuted the notario for extortion in the past or intends to do so in the future.

The offense identified in this case, grand theft, is not similar to the qualifying crime of extortion because the nature and elements of these offenses are not substantially similar. Counsel does not claim that grand theft under C.P.C. § 487(a) is similar to any of the other criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not established that he was the victim of qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if his victimization was established, however, the record does not show that he suffered substantial physical or mental abuse as a result.

In his April 30, 2008 statement that was submitted when filing his Form I-918 U petition, the petitioner recounted his interactions with the notario and stated that what happened to him is like a nightmare. In his July 14, 2010 declaration, which was submitted in response to the director's RFE, the petitioner indicated that his experiences in dealing with the notario and being placed into removal proceedings have impacted his life in the following manner: he and his family are prevented from "doing things"; he has felt depressed at times; he has lost time from work and income because of the need to go to immigration court; he has paid large amounts in attorneys' fees; he and his family lost their house and had to move to an apartment; and he cannot travel outside of the United States for family vacations. The petitioner added that his family's life is on hold because he is waiting on a decision from the immigration court and that he becomes depressed when he thinks about being ordered to leave the United States. The petitioner added that he has not received counseling but "it has affected me in may [sic] and different ways."

We recognize the petitioner's fear about his future status in the United States and do not discount how those emotions have affected his life. However, the petitioner's two declarations fail to contain the probative details of the harm he claims to have suffered. While he recounts that he has been depressed at times and suffered financial losses, the petitioner has not provided any further information or other evidence that would indicate that any abuse he suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

*6 The offense of grand theft under C.P.C. § 487(a) is not a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that the notario was investigated or prosecuted for any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also
prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101 (a)(15)(U)(i)(I) - (IV) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(e)(4). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office

Footnotes

1 A news article in the record indicates that the notario was convicted on 10 court of grand theft for defrauding clients of thousands of dollars in a scheme that promised legal residency in the United States.
2012 WL 8503538 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
Petition: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
March 27, 2012

*1 DISCUSSION: The Director, Vermont Service Center ("the director"), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the petition will remain denied.


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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage;peonage; involuntary servitude; slave
trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[7]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***

2 (ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:
(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:
(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
(2) To further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary here. The petitioner filed the instant Form I-918 U petition on November 25, 2008, and the director subsequently issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he suffered substantial physical and mental abuse as a result. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the Form I-918 U petition and the petitioner timely appealed such denial. In our prior decision, we determined that the crime of which the petitioner was a victim, grand theft, was not a qualifying crime and was not substantially similar to any of the crimes enumerated at section 101(a)(15)(U)(iii) of the Act. We additionally determined that the petitioner was not the victim of perjury, under the requirements of 8 C.F.R. § 214.14(a)(14)(i)(ii), because the perpetrator, [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not commit a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system, and [IDENTIFYING INFORMATION REDACTED BY AGENCY] also did not commit perjury to avoid or frustrate law enforcement efforts to bring him to justice. We concluded that the petitioner was not the victim of qualifying criminal activity.
and even if he had been, he would be ineligible for U nonimmigrant classification because he had not suffered substantial physical or mental abuse as a result of his victimization. On motion, counsel submits additional materials and a brief stating that the crime of grand theft is intertwined with the crime of perjury and that the mental abuse suffered by the petitioner at the hands of [IDENTIFYING INFORMATION REDACTED BY AGENCY] was substantial.

Analysis

*3 The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional materials submitted on motion fail to establish that our prior decision was based upon an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and we affirm our prior determinations that the petitioner was not the victim or qualifying criminal activity and did not suffer substantial physical or mental abuse.

On motion, counsel repeats her assertion that [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed the qualifying crime of perjury so that the petitioner would continue to need and rely on him for legal representation throughout his removal proceedings, and that the two crimes of grand theft and perjury are, therefore, intertwined. According to counsel, the petitioner became a victim of grand theft through perjury because [IDENTIFYING INFORMATION REDACTED BY AGENCY] intentionally and dishonestly took the petitioner's property (his money) by manipulating the legal system. Counsel asserts that [IDENTIFYING INFORMATION REDACTED BY AGENCY] knew when filing an asylum application on the petitioner's behalf, that the petitioner would eventually be placed into removal proceedings before the immigration court and would continue to require [IDENTIFYING INFORMATION REDACTED BY AGENCY] services to represent him. According to counsel, [IDENTIFYING INFORMATION REDACTED BY AGENCY] continued his exploitation of the petitioner after the filing of the frivolous asylum application by submitting an application for cancellation of removal before the immigration court on which Ramos indicated a false date of entry into the United States for the petitioner.

As stated in our prior decision, the evidence in the record demonstrates that the petitioner was harmed by [IDENTIFYING INFORMATION REDACTED BY AGENCY] and that he was the victim of notario fraud committed by [IDENTIFYING INFORMATION REDACTED BY AGENCY]. The evidence does not demonstrate, however, that [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The evidence also does not indicate that [IDENTIFYING INFORMATION REDACTED BY AGENCY] after filing the asylum application, completed the cancellation of removal application on the petitioner's behalf that was submitted to the immigration court, as counsel claims. As stated in our prior decision, apart from [IDENTIFYING INFORMATION REDACTED BY AGENCY] filing the asylum application, the relevant evidence does not indicate that any of [IDENTIFYING INFORMATION REDACTED BY AGENCY] subsequent dealings with the petitioner involved perjury. The record shows that [IDENTIFYING INFORMATION REDACTED BY AGENCY] filed the frivolous asylum application shortly after his first meeting with the petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by Ramos, the exploitation resulted from notario fraud and [IDENTIFYING INFORMATION REDACTED BY AGENCY] subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that [IDENTIFYING INFORMATION REDACTED BY AGENCY] perjury offense was accomplished, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Substantial Physical or Mental Abuse

*4 In our prior decision, we concluded that even if the petitioner had demonstrated that he was the victim of qualifying criminal activity, he failed to establish that he suffered resultant substantial physical or mental abuse. On motion, counsel states that the petitioner "is not able to live a normal life and function normally," but fails to provide any evidence to support her assertions. We previously addressed the evidence submitted below, including the petitioner's January 8, 2008 statement in which he described...
the nightmares he has experienced, and stated that he suffers from anxiety and depression. As we previously concluded, the petitioner did not provide any probative details of the effects of the criminal activity on him to lead to a conclusion that he suffered substantial physical or mental abuse. Similarly, the petitioner's psychological evaluation, dated November 24, 2008 and submitted below, from [IDENTIFYING INFORMATION REDACTED BY AGENCY] did not provide any probative details regarding the effects of the criminal activity on the petitioner's daily life in light of his diagnoses of anxiety and depression, which were made nearly 12 years after he retained [IDENTIFYING INFORMATION REDACTED BY AGENCY] services. 1

On motion, counsel also submits printouts of articles on depression and anxiety from the websites of MedlinePlus and WebMD. Counsel claims that these articles and [IDENTIFYING INFORMATION REDACTED BY AGENCY] evaluation show that the petitioner suffered substantial mental abuse as a result of his victimization because his anxiety and depression have interfered with his ability to function normally. We do not discount [IDENTIFYING INFORMATION REDACTED BY AGENCY] credentials or the harm that [IDENTIFYING INFORMATION REDACTED BY AGENCY] actions caused the petitioner. However, the record still lacks sufficient, probative evidence that the harm suffered by the petitioner constituted substantial physical or mental abuse under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15) (U)(i)(I) and (iiii) of the Act. He, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(II)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

ORDER: The motion is granted. The AAO's prior decision, dated February 25, 2011, is affirmed. The appeal remains dismissed and the petition remains denied.

Perry Rhew
Chief
Administrative Appeals Office

Footnotes
1 Counsel claims on motion that by noting the lack of evidence relating to the petitioner's pursuit of [IDENTIFYING INFORMATION REDACTED BY AGENCY] therapy recommendations, the AAO erroneously concluded that the petitioner did not suffer substantial physical or mental abuse. While a petitioner may be found to have suffered substantial physical or mental abuse absent a showing that he or she sought mental health counseling or treatment, in this specific case, the petitioner's diagnoses alone were insufficient to demonstrate that he suffered substantial physical or mental abuse.

2012 WL 8503538 (DHS)
2015 WL 1664908 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
Petition: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
April 1, 2015

*1 DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petitioner timely appeals with a brief and additional evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) (i) of the Act if:
(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.[]

Clause (ii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states, in pertinent part:
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: . . . perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[]
"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." 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

*2 (14) *Plaint of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); see also 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner, a native and citizen of Mexico, represents that she last entered the United States in 2004 by presenting a false travel document to a U.S. immigration officer. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 29, 2013. The director subsequently issued a Request for Evidence (RFE) of qualifying criminal activity, among other issues. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility and denied the Form I-918 U petition. In her decision, the director found that the petitioner failed to establish that she was the victim of qualifying criminal activity, and was consequently precluded from establishing eligibility for the other criteria. The petitioner timely appealed.

On appeal, the petitioner asserts that she was a victim of mail fraud, bank fraud, and wire fraud, which she claims are substantially similar to perjury and fraud in foreign labor contracting. She also contends that the perpetrator of the crime of which she was a
victim likely committed perjury in the course of his commission of mail fraud, bank fraud, and wire fraud, and he also committed perjury at his criminal trial, at which the petitioner served as a witness.

Claimed Criminal Activity

As recounted in the September 3, 2002, "Government's Trial Brief," the September 24, 2002, Transcript of Trial Proceedings, and the petitioner’s April 22, 2013, personal affidavit, the petitioner was a victim of a scheme whereby [IDENTIFYING INFORMATION REDACTED BY AGENCY] and his wife purchased and resold homes using unsuspecting straw buyers who spoke limited English and were thus unaware of the contents of the papers they were signing. In 1997 or 1998, Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] approached the petitioner and offered to help her improve her credit so that she could achieve home ownership at some point in the future. Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] indicated that by helping other individuals, she would accumulate “points” that would subsequently help her buy her own home. Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] came to the petitioner’s apartment on several occasions and asked her to sign documents that were entirely in English. After several visits and several signatures, Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] disappeared. Several years later, investigators informed the petitioner that a home had been purchased in her name, and the home had since been foreclosed due to a defaulted mortgage. The petitioner testified against Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] and his spouse on September 24, 2002, and was cross-examined by Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] who was representing himself. The petitioner indicated that due to the damage to her credit from Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] crimes, she has been unable to purchase a home, and is worried she will have difficulty obtaining rental housing. The petitioner asserted that she has been affected financially and emotionally by the fraud crimes perpetrated against her.

*3 The Form I-918 Supplement B was signed by U.S. District Court Judge [IDENTIFYING INFORMATION REDACTED BY AGENCY] (certifying official) on March 8, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as perjury, and “Other: Fraud/Forgery.” However, the statutory citations at Part 3.3 do not include perjury. Rather, Part 3.3 indicates investigation or prosecution of the following crimes: 18 U.S.C. § 371 (Conspiracy), 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), and 18 U.S.C. § 1344 (Bank Fraud). As Part 3.5, the certifying official asserted that the petitioner was a victim of a real estate fraud scheme, and that the perpetrator had been convicted of conspiracy, mail fraud, wire fraud, and bank fraud. The certifying official did not certify that the petitioner was a victim of perjury, or that perjury had been investigated and/or prosecuted.

Analysis

The crimes that the certifying official identified on the Form I-918 Supplement B at Part 3.3 as having been investigated or prosecuted (conspiracy, mail fraud, wire fraud, and bank fraud) are not specifically listed as qualifying crimes 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.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of these offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. Id. The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

The petitioner asserts that the investigated and prosecuted statutes are substantially similar to fraud in foreign labor contracting, which is defined at 18 U.S.C. § 1351 as follows:

(a) Work Inside the United States.—Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.
(b) Work Outside the United States.—Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment performed on a United States Government contract performed outside the United States, or on a United States military installation or mission outside the United States or other property or premises outside the United States owned or controlled by the United States Government, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment, shall be fined under this title or imprisoned for not more than 5 years, or both.


On appeal, the petitioner indicates that fraud in foreign labor contracting involves intent to defraud, making it a similar activity to the investigated and prosecuted crimes in the instant matter. However, the regulation at 8 C.F.R. § 214.14(e)(9) requires that the “nature and elements” of the investigated statute be “substantially similar” to a statutorily enumerated crime to qualify as a similar activity. Thus, a single similar element is insufficient to render an investigated crime substantially similar to a statute’s enumerated offense. Here, both subsections of fraud in foreign labor contracting contain as an element the recruitment, solicitation, or hiring of a person outside the United States. None of the investigated or prosecuted crimes listed by the certifying official in the Supplement B (conspiracy, mail fraud, wire fraud, and bank fraud) require the recruitment, solicitation, or hiring of a person outside the United States. Consequently, none of the investigated or prosecuted crimes are substantially similar to fraud in foreign labor contracting.

The petitioner also asserts that the investigated and prosecuted statutes are substantially similar to the qualifying offense of perjury. Perjury is defined at 18 U.S.C. § 1621 as follows:

Whoever—
(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury ....

18 U.S.C.A. § 1621 (West 2015)

None of the crimes enumerated by the certifying official in the Supplement B require testimony or declaration under oath or penalty of perjury to a material matter which the testifier does not believe to be true as elements. Even if the perpetrator did commit perjury in the course of the commission of his other crimes or at trial, the relevant inquiry is whether the nature and elements of the specific crimes investigated or prosecuted are “substantially similar” to one of the enumerated crimes, not whether an enumerated crime may have also occurred in the commission of the investigated or prosecuted crimes. See 8 C.F.R. § 214.14(e)(9). Additionally, as stated above, the relevant inquiry is not fact-based.

Even if the prosecuted crimes were found to be substantially similar to perjury, a victim of perjury must additionally demonstrate that the perpetrator committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate,
arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). On appeal, the petitioner asserts that Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] co-conspirator committed perjury to further the investigated crimes by fraudulently filing a bankruptcy petition in Federal court. However, the record does not indicate that the bankruptcy petition was filed on behalf of the petitioner, and thus the petitioner is not personally a victim of that particular criminal act. The petitioner also asserts that by fraudulently submitting a Federal Housing Administration (FHA) loan application on her behalf, Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] and his co-conspirators committed perjury to further their abuse of the petitioner through manipulation of the legal system. However, it is apparent that this criminal conduct was an integral part of the original scheme to fraudulently purchase the home, and not to "further" abuse the petitioner. In the alternative, the petitioner asserts that Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed perjury at his trial by repeating untrue facts during testimony and during his cross-examination of the petitioner, to frustrate efforts to prosecute him or otherwise bring him to justice. Again, while there may be a factual basis for the petitioner’s assertions, Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] potential perjury at trial was not the certified crime. Rather, the Supplement B references the underlying mail fraud, wire fraud, and bank fraud. The petitioner does not assert that Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] potential perjury was detected, investigated, or prosecuted by the relevant authorities. Nor does the petitioner suggest that she was helpful in an investigation of whether Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] committed perjury at his trial. In addition, the evidence does not indicate that the petitioner was victimized by Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] potential perjury at trial, but rather by the underlying crimes for which Mr. [IDENTIFYING INFORMATION REDACTED BY AGENCY] was prosecuted. The petitioner has thus not established either that the certified crimes are substantially similar to perjury, or that the perjury from which she suffered harm was perpetrated as a means to frustrate efforts to prosecute the perpetrator for other criminal activity, or to further abuse her by manipulating the legal system.

*5 Accordingly, the petitioner has not shown that she was the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15) (U)(i) and (iii) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(I)(I)--(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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 Ottende, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

Ron Rosenberg
Chief
Administrative Appeals Office

Footnotes
1 We determine, in our sole discretion, the evidentiary value of a Form I-918, Supplement B, 8 C.F.R. 214.14(c)(4).

2015 WL 1664908 (DHS)
2015 WL 1431837 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Newark

IN RE: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(f)
On Behalf of Applicant: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
March 16, 2015

*1 DISCUSSION: The Field Office Director, Newark, New Jersey denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion. The motion will be granted and the prior decision of the AAO is affirmed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. On appeal, the AAO also determined that the applicant failed to establish extreme hardship for a qualifying relative and dismissed the appeal accordingly.

In theapplicant's motion, counsel asserts that the applicant did not knowingly make a misrepresentation to gain entry to the United States, as he was unaware that the I-551 stamp with which he entered was fraudulent. Counsel further asserts that, in the alternative, the applicant has demonstrated that his spouse would experience extreme hardship if his waiver application is denied. In support of the motion, the applicant submitted medical documentation concerning his spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the
refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

On June 4, 1994, the applicant entered the United States by presenting a passport containing a fraudulent I-551 stamp. The applicant asserts that after a notario filled immigration applications on his behalf, he was given an employment authorization card on April 5, 1994, and a I-551 stamp in his passport a week later. The applicant contends that he signed blank immigration applications and submitted supporting documentation, but the notario filled the applications on his behalf. The applicant also asserts that he was unaware that the I-551 stamp was fraudulent at the time that he entered the United States, as he believed himself to be a lawful permanent resident at the time of his entry.

*2 Counsel for the applicant asserts that the applicant became aware that his I-551 was fraudulent only after this was indicated to him by an attorney. Counsel contends that the applicant made an innocent mistake, as he was given the I-551 stamp after he was fingerprinted and photographed in connection with his immigration applications and was admitted to the United States with the stamp on June 4, 1994. Counsel asserts that, based upon a preponderance of the evidence, the applicant did not obtain an immigration benefit through fraud or misrepresentation.

The burden is on the applicant to demonstrate by a preponderance of the evidence that he did not willfully present a fraudulent I-551 application to gain entry into the United States. See Section 291 of the Act, 8 U.S.C. § 1361. The record contains a Form I-485, Application to Register Permanent Residence or Adjust Status, signed by the applicant and filed on March 23, 1994. The Form I-485 does not indicate that it was prepared by anyone other than the applicant. The underlying petition for the Form I-485, a Form I-130, Petition for Alien Relative, was also signed by the applicant on February 17, 1994. The applicant and the individual who filed the Form I-130 on his behalf were instructed to appear for an interview on July 27, 1994. As they did not appear, the applicants Form I-485 was denied on September 5, 1994.

The applicant asserts that a notario filled out immigration applications for him, which the applicant signed as blank forms. However, the applicant signed his Form I-485, filed March 23, 1994, under a certification stating that the application and the evidence submitted with it was all true and correct. As such, the applicants signature indicates his awareness of and certification to the truthfulness of the facts contained within his application. Further the applicant, at the time of his entry to the United States on June 4, 1994, would be aware that he had not yet attended his adjustment of status interview, so that he could not have been granted lawful permanent residence. The applicant has failed to satisfy his burden of demonstrating his belief that he was a lawful permanent resident on June 4, 1994, when he entered the United States with a fraudulent I-551 stamp. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation.

Counsel for the applicant asserts the applicants entry should have been considered in light of the Board of Immigration Appeals decision in Matter of Quillantan, 25 I&N Dec. 285 (BIA 2010). In Matter of Quillantan, a respondent entered the United States as a car passenger waved through a border crossing by an immigration official and was determined to have been admitted to the United States. Id. The issue addressed was procedural regularity for admission, not inadmissibility. Whether the applicant was admitted is related to his ability to apply for adjustment of status, not the present waiver application. It does not appear that this has been questioned by the field office director, but in any event, we do not have jurisdiction over adjustment of status pursuant to Form I-485, Application to Register Permanent Residence or Adjust Status. As such, we will not consider whether the applicant was lawfully admitted to the United States, as it has no bearing on the applicants inadmissibility under section 212(a)(6)(C)(i) of the Act.

*3 A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The
applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mondes-Morales,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Plich,* 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige,* 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim,* 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968).

*4* However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige,* 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See e.g., Matter of Bing Chih Kao and Mei Tsui Lin,* 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Plich* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salecido-Salecido,* 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai,* 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant is a 52-year-old native and citizen of Colombia. The applicant's spouse is a 56-year-old native of Colombia and citizen of the United States. The applicant is currently residing with his spouse and child in [IDENTIFYING INFORMATION REDACTED BY AGENCY] New Jersey.

Counsel for the applicant asserts that the applicant and his spouse have been married since April [IDENTIFYING INFORMATION REDACTED BY AGENCY] so that the applicant's spouse has been greatly dependent upon his support since then. Counsel contends that the applicant's spouse earned 21,680 dollars in 2005 and that the poverty guidelines indicate that 15,510 is the minimum income needed to support a family of two. Counsel further asserts that the applicant's spouse would be responsible to support her stepson and pay for his college tuition each year.

It is initially noted that though counsel refers to the applicant's spouse's stepson, and asserts that the son's mother is the applicant's prior spouse, the record reflects that the applicant and his spouse have a child in common, confirmed by a birth certificate, the only child referred to by the applicant's spouse in her affidavit and apparently the only son living with the applicant and his spouse. The assertion that there is a stepson is not supported by the record. The applicant's son is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant's spouse.

*5 The record reflects that the applicant's spouse's son is nineteen years of age and there is no information concerning whether he is currently attending school or supporting documentation indicating that he has been admitted to a university. The record does not contain any information concerning whether the applicant's spouse's son is currently employed or still residing with the applicant and his spouse. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Soffrell, 22 I&N Dec. 158, 165 (Comm. 1998) (citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record indicates that in 2011, the applicant's spouse earned 22,534 dollars. There is no documentation or explanation of expenses or other possible asset. The record is insufficient to determine that the applicant's spouse would be unable to meet her financial obligations in the absence of the applicant.

Counsel for the applicant asserts that the applicant's spouse would suffer emotionally upon separation from the applicant, as she would be a single mother raising a child that is not her own. As noted, the record reflects that the applicant's spouse and her biological son would be separated from the applicant if he returned to Colombia. The applicant's spouse asserts that she and her son would be devastated if separated from the applicant. The applicant's spouse contends that she and the applicant have a very loving relationship and that his son had not been separated from him since the day he was born. It is noted that the affidavit from the applicant's spouse is dated December 12, [IDENTIFYING INFORMATION REDACTED BY AGENCY] when her son was a minor, at the age of eleven. The record contains a letter from a physician stating that the applicant's spouse has a history of hypertension, hypothyroidism, glucose intolerance, anxiety and depression. The letter states that the applicant's spouse is experiencing stress due to the applicant's immigration status and she needs psychological support from her husband. The letter does not detail the level to which the medical and psychological conditions are affecting the spouse's life, the type of support needed by the applicant's spouse or the type of support provided by the applicant.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Colombia because she is a longtime resident of the United States, since 1998. Counsel further asserts that the applicant's spouse has been employed with the [IDENTIFYING INFORMATION REDACTED BY AGENCY] School District since 2004 and would have to leave that behind if she returned to Colombia. The record contains an employment letter and tax documents indicating that the applicant's spouse is employed as a teacher's assistant and was hired on November 15, 2004.

*6 Counsel asserts that the applicant's spouse would experience hardship upon relocation based upon the country conditions and violence against women in Colombia. The U.S. Department of State issued a travel warning for Colombia, dated November 14, 2014, stating that security in Colombia has improved significantly in recent years, though violence linked to narco-trafficking continues to affect some rural and urban areas. The applicant's spouse does not make any assertions concerning any hardship she would experience upon relocating to Colombia with the applicant. The record reflects that the applicant's spouse is a native of Colombia and her mother currently resides in [IDENTIFYING INFORMATION REDACTED BY AGENCY] Colombia.
The record does not contain any information concerning any other familial ties the applicant's spouse retains in Colombia. There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if he relocated to Colombia.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(f) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the prior AAO decision is affirmed.

*7 ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.*

Ron Rosenberg
Chief
Administrative Appeals Office

2015 WL 1431837 (DHS)
2015 WL 847220 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Vermont Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
February 4, 2015

*1 DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.


The director denied the petition because the petitioner did not establish that: he was the victim of qualifying criminal activity; he suffered substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal activity occurred in the United States. On appeal, the petitioner submits a brief.

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 (ii);
(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

*2. According to the regulation at 8 C.F.R. § 214.14(e)(9), the term "any similar activity" as used in section 101(a)(15)(U) (iii) of the Act "refers to criminal offences in which the nature and elements of the offences are substantially similar to the statutorily enumerated list of criminal activities." (Emphasis added).

The eligibility requirements for U nonimmigrant classification are further 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.

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity . . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously
or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

*3 The petitioner is a native and citizen of Mexico who claims he entered the United States on or about March of 2003, without being inspected, admitted, or paroled. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on December 10, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On November 29, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that he was a victim of fraud which is similar to extortion and obstruction of justice, qualifying crimes.

Claimed Criminal Activity

In his declaration, the petitioner recounted that after he was placed in removal proceedings, he contacted [IDENTIFYING INFORMATION REDACTED BY AGENCY] to assist him with his immigration case. The petitioner stated that after he paid [IDENTIFYING INFORMATION REDACTED BY AGENCY] $2,500 to represent him, he learned that [IDENTIFYING INFORMATION REDACTED BY AGENCY] was either suspended or disbarred from the practice of law. According to the petitioner, he missed his court hearing because of [IDENTIFYING INFORMATION REDACTED BY AGENCY] and now he worries a lot, struggles with stress, and does not want to eat or sleep.

The Form I-918 Supplement B that the petitioner submitted was signed by Judge [IDENTIFYING INFORMATION REDACTED BY AGENCY] General Session Court Division, Davidson County, Tennessee (certifying official) on July 6, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "other: fraud." In Part 3.3, the certifying official referred to "Intentional Misrepresentation; Unfair or Deceptive Act (TCA 47-18-104)" as the criminal activity that was investigated or prosecuted. At Parts 3.5 and 4.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner "was a victim of fraud by former attorney [IDENTIFYING INFORMATION REDACTED BY AGENCY] (Now disbarred) ... [and] appeared in civil court to testify about the fraud and civil damages he has incurred . . . ."

Analysis

We conduct appellate review on a de novo basis. Based on the evidence in the record, we find no error in the director's decision denying the petitioner's Form I-918 U petition.

Unfair or Deceptive Acts or Practices Under Tennessee Law is not Qualifying Criminal Activity

The Form I-918 Supplement B indicates that the crime investigated or prosecuted was Tennessee Code § 47-18-104, unfair or deceptive acts or practices. This crime is not specifically listed as a qualifying crime under section 101(a)(15)(U)(ii) 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." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the unfair or deceptive acts or practices offense 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.
On appeal, the petitioner contends that unfair or deceptive acts or practices is substantially similar to the qualifying crimes of extortion and obstruction of justice. Section 47-18-104 of the Tennessee Code prohibits "[a] unfair or deceptive acts or practices affecting the conduct of any trade or commerce" and lists fifty such acts or practices. TENN. CODE ANN. § 47-18-104. Under Tennessee law, "[a] person commits extortion who uses coercion upon another person with the intent to: (1) Obtain property, services, any advantage or immunity; (2) Restrict unlawfully another's freedom of action; or (3)(A) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity . . . ." TENN. CODE ANN. § 39-14-112. Obstruction of justice is addressed in Title 39, Chapter 16, Part 6 of the Tennessee Code. The petitioner contends on appeal that obstruction of justice is a broad category of conduct includes resisting or evading arrest, obstruction of service of a legal writ or process, compounding a crime, escape from a penal institution, and failure to appear in court when required.

No elements of unfair or deceptive acts or practices under § 47-18-104 of the Tennessee Code are similar to either extortion under § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6. The petitioner has not specified which of the fifty unfair or deceptive acts or practices listed in § 47-18-104 is substantially similar to a qualifying crime. Rather, the petitioner claims on appeal that this case of "notario fraud" implicates extortion and obstruction of justice, and that the spirit of the U nonimmigrant status is to protect vulnerable immigrant communities from crimes such as notario fraud. While the record shows the petitioner submitted an affidavit in the State's case against [IDENTIFYING INFORMATION REDACTED BY AGENCY] nonetheless, the standard for inclusion as qualifying criminal activity is that the crime investigated or prosecuted is "substantially similar" to one of the enumerated crimes, and the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of § 47-18-104 of the Tennessee Code, unfair or deceptive acts or practices, is substantially similar to either extortion under Tennessee Code § 39-14-112 or obstruction of justice under Title 39, Chapter 16, Part 6 of the Tennessee Code. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the only crime certified at Part 3.3 of the Form I-918 Supplement B was unfair or deceptive acts or practices. The evidence of record does not demonstrate that the crime of extortion, obstruction of justice, or any other qualifying crime was investigated or prosecuted. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(I) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

A the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, users or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(III) of the Act.

Jurisdiction
As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(I)(IV) of the Act.

Conclusion

The petitioner has failed to establish that he was the victim of qualifying criminal activity; he suffered substantial physical or mental abuse as a result; he possessed information regarding qualifying criminal activity; he was helpful in the investigation or prosecution of qualifying criminal activity; and that qualifying criminal activity occurred in the United States. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(I) of the Act and the appeal must be dismissed.

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 Otieno, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.

Ron Rosenberg
Chief
Administrative Appeals Office

Footnotes

Note 1. According to the petitioner’s June 26, 2009 affidavit, [IDENTIFYING INFORMATION REDACTED BY AGENCY] who the certifying official referenced in the Form I-918 Supplement B, was an employee of [IDENTIFYING INFORMATION REDACTED BY AGENCY]

2015 WL 8472220 (DHS)
Date: JAN 3 1 2014    Office: VERMONT SERVICE CENTER    FILE:

IN RE:     Petitioner:    


ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

www.uscis.gov
NON-PRECEDENT DECISION

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On motion, counsel submits a brief.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

(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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states, in pertinent part:

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: ... perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

"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." 8 C.F.R. § 214.14(a)(9).
The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

**Facts and Procedural History**

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of Guyana who last entered the United States on May 29, 1996 as a nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on July 5, 2011, which the director denied on September 4, 2012. On appeal, counsel contended that the perpetrator committed perjury and procured the petitioner to commit perjury and that supporting evidence indicated that the perjury was included under the charge of scheme to defraud.

On motion, counsel asserts, in part, that the qualifying crime occurred during the commission of the non-qualifying crime that was certified, and that the perjury was central to the criminal activity
investigated and prosecuted.

Claimed Criminal Activity

As recounted in her May 2011 affidavit, in February of 2009, the petitioner hired [redacted] to represent her in obtaining lawful permanent residence. Mr. [redacted] told her she had to file an asylum application in order to obtain lawful permanent residence, and although the petitioner informed him that she did not fear persecution, he filled out the form and both the petitioner and Mr. [redacted] signed the asylum application. After Mr. [redacted] filed the application, he told the petitioner she had to pay another fee to expedite the case, and another fee to obtain a waiver for non-payment of taxes. The petitioner learned that Mr. [redacted] was not legitimate, and an attorney reported him to the Manhattan District Attorney, who investigated and prosecuted the case. The petitioner provided what information she had, testified before the grand jury, and was prepared to testify at trial but Mr. [redacted] agreed to a plea bargain before trial.

Analysis

In its prior decision, the AAO determined that the petitioner had not established that she was the victim of qualifying criminal activity. On motion, counsel contends that perjury, a qualifying crime, occurred during the commission of the crime that was certified on the Form I-918 Supplement B, scheme to defraud. In support of her I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [redacted] of the Office of the District Attorney of New York County (certifying official) that listed the statutory citations of the crimes investigated or prosecuted as New York Penal Law (N.Y. Penal Law) sections 190.65(1)(b) (scheme to defraud), 155.30 (grand larceny), 110/155.30(1) (attempted grand larceny), and New York Judicial Law section 478 (practicing or appearing as attorney-at-law without being admitted and registered). On motion, counsel notes that the certifying official indicated that “[t]he filling out and filing of the I-589 under penalties of perjury is central and pivotal to the defendant’s ability to perpetrate the fraud in this case. . . . [T]he perjury aspect of these [sic] case . . . was extremely important and is represented in the indictment by the Scheme to Defraud charge.” As the certifying official indicated that perjury was investigated as part of the scheme to defraud charge, we withdraw our prior determination to the contrary.

Next, to establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the perpetrator committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). Here, counsel focuses on the second prong of the regulation at 8 C.F.R. § 214.14(a)(14)(ii), stating that the term “further” should be interpreted as helping to progress or advance.
As stated in our prior decision, the petitioner’s exploitation resulted from the initial fraud and the perpetrator’s subsequent misleading interactions with the petitioner, and there is no evidence to show that the perpetrator committed perjury in principal part to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. Though counsel asserts that there are various definitions of the word “further,” each of these definitions implies that at the time the perjury occurred, it was committed in order to “advance” or “progress” the exploitation or undue control that was already occurring. Here, the perjury was not committed in order to further, advance, or progress the exploitation, but rather it was the first step in initiating the perpetrator’s fraud. Furthermore, there is no evidence that the perpetrator had the petitioner sign the Form I-589 in order to exploit or exert undue control over her, as opposed to using the Form I-589 as a means to get the petitioner placed into removal proceedings so that she could apply for residency, for example, through cancellation of removal for nonpermanent residents, or another form of relief from removal. As such, the petitioner has not shown that she was the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

**Conclusion**

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(ii)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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 Otieno*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion is granted. The appeal remains dismissed and the petition remains denied.
DATE: JUN 10 2011 Office: VERMONT SERVICE CENTER  FILE:  

IN RE: Petitioner: 


ON BEHALF OF PETITIONER: 

INSTRUCTIONS: 

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

www.uscis.gov
DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.


The director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime. On appeal, counsel submits a brief.

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[1]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), also requires the submission of a certified law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification) with a Form I-918 U petition.
The regulation at 8 C.F.R. § 214.14(a) further states, in pertinent part:

(14) **Victim of qualifying criminal activity** generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

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(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(I) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (law enforcement certification). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

**Facts and Procedural History**

The petitioner is a native and citizen of Mexico who states that he first entered the United States without inspection in 1989. In 2000, a Form I-589, Application for Asylum and Withholding of Removal, was filed on the petitioner’s behalf, which was referred to the Immigration Court in Los Angeles, California.¹ In February 2007, the petitioner filed an application for interim relief pending implementation of the U nonimmigrant visa provisions. On March 26, 2007, the director denied the petitioner’s application due to insufficient evidence that he suffered substantial abuse as a result of having been the victim of the claimed criminal activity. The petitioner filed the instant Form I-918 on March 10, 2009. The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the offense perpetrated against the petitioner was qualifying criminal activity and that he suffered

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¹ The petitioner remains in proceedings and his next hearing is scheduled for June 20, 2011.
substantial physical or mental abuse as a result of such victimization. Counsel timely responded with additional evidence which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed.

On appeal, counsel maintains that the immigration fraud perpetrated against the petitioner made him the victim of perjury and grand theft and that the petitioner suffered substantial mental abuse because he and his family face possible deportation from the United States.

The Claimed Criminal Activity

In his 2005 and 2010 declarations, the petitioner recounted that he first contacted a business called [redacted] April 2002 for assistance in obtaining lawful permanent residency in the United States. The petitioner initially paid [redacted] $3,700 and later paid an additional $2,800. The petitioner recalled that he also paid another $1,000 for interpreters at interviews and hearings. According to the petitioner, the owner of [redacted] assured him that he could get a “green card.” The petitioner recalled signing some documents, but states he was never told that an asylum application was filed on his behalf. The petitioner explained that [redacted] told him that he would have an interview to obtain a work permit, but at the interview, the petitioner realized that [redacted] had filed an asylum application and he then had hearings before an immigration judge where a lawyer associated with [redacted] represented him. When the petitioner discovered that [redacted] had defrauded him, he asked for his documents back, but [redacted] threatened to have him deported if he did not cooperate with [redacted]. The petitioner stated that after his experiences with [redacted] he began drinking and smoking, had difficulty sleeping and became severely distressed at the prospect of possible deportation.

The petitioner submitted a law enforcement certification signed by an investigator with the Orange County California District Attorney’s Office. The certification lists the criminal activity investigated or prosecuted as: California Penal Code (CPC) sections 487 (grand theft) and 664/127 (procuring another to commit perjury). The certification partially summarizes the petitioner’s dealings with [redacted] and describes the injury to the petitioner as, “Loss of the fees paid. Ability to change legalize [sic] in the United States was jeopardized.”

Grand Theft Under C.P.C. § 487 Is Not a Qualifying Crime

The crime of grand theft is not a qualifying crime 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.” 8 C.F.R. § 214.14(a)(9).

Under California law, grand theft is committed “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950) . . . .” Cal. Penal Code § 487 (West 2011). On appeal, counsel asserts that “Grand Theft should be held to be a similar activity because it is part of a continuing fraud against this Applicant.” Counsel fails to demonstrate that the nature and
elements of grand theft under CPC § 487 are substantially similar to the nature and elements of perjury under CPC §§ 118 and 127. In addition, counsel does not claim that grand theft under California law is substantially similar to any of the other crimes listed in section 101(a)(15)(U)(iii) of the Act. Accordingly, grand theft under CPC § 487 is not a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The Petitioner was Not a Victim of Perjury

Under CPC § 127, subornation of perjury is defined as: "Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured." (West 2011). Perjury under CPC § 118 is defined as follows:

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may be law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

C.P.C. § 118 (West 2011)

To establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that La Guadalupana procured him to commit perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice for other criminal activity; or (2) to further its abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The relevant evidence does not demonstrate that La Guadalupana suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring it to justice for other criminal activity. The record indicates that the Orange County District Attorney’s Office filed a criminal complaint against [redacted] in 2003, over three years after the petitioner signed his asylum application. As [redacted] was charged with grand theft through immigration fraud
years after the petitioner signed his asylum application, there is no reason to believe that suborning
the petitioner to commit perjury by signing a false asylum application avoided or frustrated the
district attorney’s prosecution efforts, as the crime would only have provided further evidence of
malfeasance.

Counsel has also not established that committed a perjury offense to further abuse,
exploit or exert undue control over the petitioner through the manipulation of the legal system. The
record shows that filed the asylum application shortly after being retained by the
petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or
exploitation of the petitioner. While the record shows that the petitioner was exploited by the
exploitation resulted from fraud, not from further perjury under C.P.C. § 118. Accordingly, the record does not demonstrate that suborned the petitioner’s perjury, in principal part, as a means to further its exploitation, abuse or undue control over the petitioner by
its manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying
crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of
the Act.

Conclusion

The petitioner has not demonstrated that he was the victim of qualifying criminal activity, as defined
at section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying
criminal activity also prevents him from meeting the other statutory requirements for U

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the
petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has
not been met. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.
DATE: NOV 3 2011  Office: VERMONT SERVICE CENTER  FILE: 

IN RE:  Petitioner:  


ON BEHALF OF PETITIONER:  

INSTRUCTIONS:  
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[Signature]
Perry Rhew
Chief, Administrative Appeals Office


DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.


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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage;peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[1]

The regulation at 8 C.F.R. § 214.14(a) defines the following pertinent terms:

(14) Victim of qualifying criminal activity generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

***
(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

**Pertinent Facts and Procedural History**

The petitioner is a native and citizen of Turkey who last entered the United States on February 27, 2000 as a nonimmigrant visitor. In 2007, the petitioner was served with a Notice to Appear for removal proceedings after a Form I-130, petition for alien relative, filed on his behalf was denied. The petitioner filed the instant Form I-918 U petition on April 10, 2008.¹ On May 7, 2008, the petitioner’s removal proceedings were administratively closed due to his pending U petition.

The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Finding the petitioner’s response to the RFE insufficient to demonstrate his eligibility, the director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

On appeal, counsel asserts that the petitioner was the victim of criminal possession of a forged instrument and scheme to defraud, which are substantially similar to the qualifying crimes of perjury and obstruction of justice, and which caused the petitioner to suffer substantial mental abuse. Counsel submits a brief and an additional affidavit from the petitioner discussing his inability to attend his father’s funeral in Turkey due to his lack of lawful immigration status in the United States.

¹ Prior to the issuance of regulations implementing the U nonimmigrant classification, the petitioner filed three requests for interim relief, which were denied on March 2, 2004; October 25, 2004 and January 18, 2006.
The AAO reviews these proceedings de novo. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional affidavit submitted on appeal fail to overcome the ground for denial and the appeal will be dismissed for the following reasons.

The Criminal Activity of which the Petitioner was the Victim

In his April 28, 2010 affidavit, the petitioner recounted that in 2001 a coworker referred him to a nonimmigrant status certification (Form I-918 Supplement B) was completed by the petitioner's law enforcement U nonimmigrant status certification (Form I-918 Supplement B) was completed by the petitioner's law enforcement attorney's office. On the certification at Part 3 regarding the criminal acts, the petitioner stated that he was the victim of criminal possession of a forged instrument in the second degree under New York Penal Law (NYPL) § 170.25 and he explained that the petitioner was injured by paying $15,000 to the criminal defendant and waiting two years for a "green card." When describing the petitioner's helpfulness at Part 4 of the certification, the petitioner explained that as a result of the testimony of the petitioner and other victims, the defendant was convicted of criminal possession of a forged instrument in the second degree and scheme to defraud in the first degree under NYPL § 190.65(1)(b).

The Offenses of which the Petitioner was a Victim are Not Qualifying Crimes

On appeal, counsel asserts that the director only considered the petitioner to be a victim of possession of a forged instrument and did not address the petitioner's victimization from the crime of scheme to defraud. We find no error in the director's decision because the law enforcement certification indicates that the petitioner was the victim only of criminal possession of a forged instrument. That crime is also the only one in which the petitioner is specified as a victim in the criminal complaint filed against

The crime of scheme to defraud nonetheless merits discussion because of the description of the petitioner's helpfulness and other relevant evidence indicates that he may have also been the victim of scheme to defraud, even if was not ultimately prosecuted for that crime against the petitioner.
However, neither possession of a forged instrument nor scheme to defraud are qualifying crimes 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." 8 C.F.R. § 214.14(a)(9). The offenses perpetrated against the petitioner are not substantially similar to any of the statutorily enumerated qualifying crimes.

On appeal, counsel asserts that criminal possession of a forged instrument and scheme to defraud are substantially similar to the qualifying crime of obstruction of justice. Under New York penal law:

A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10.[2]


New York penal law defines scheme to defraud as, in pertinent part:

A person is guilty of a scheme to defraud in the first degree when he or she: . . . (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons . . . .

N.Y. Penal Law § 190.65(1) (McKinney 2011).

Counsel claims that these crimes are substantially similar to the federal offense of obstruction of justice in the form of obstruction of proceedings before departments, agencies and committees, which is defined, in pertinent part as:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--


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[2] The specified forged instruments include, “[a] written instrument officially issued or created by a public office, public servant or governmental instrumentality.” N.Y. Penal Law § 170.10(3) (McKinney 2011). The criminal complaint filed against [REDACTED] asserted that she possessed a forged passport in the petitioner’s name.
Rather than engaging in the requisite statutory analysis, counsel asserts that commission of possession of a forged instrument and scheme to defraud amounted to obstruction of justice because she prevented the petitioner from pursuing legitimate immigration applications with USCIS “and thereby impeded the due and proper administration of the law before an agency.” Counsel fails to articulate how the nature and elements of these crimes are substantially similar.

Possession of a forged instrument under NYPL § 170.25 and scheme to defraud under NYPL § 190.65(1)(b) contain no element of influencing, obstructing or impeding the administration of law in a pending proceeding before a federal department or agency, which is the relevant element of the federal offense of obstruction of justice at 18 U.S.C. § 1505. The federal offense of obstruction of justice also lacks the mens rea of intent to defraud, deceive or injure in NYPL §§ 170.25, 190.65(1)(b); as well as the elements of possession or utterance of a forged instrument in NYPL § 170.25 and obtaining the property of another through false or fraudulent pretenses in NYPL § 190.65(1)(b). The natures of these crimes are also dissimilar. Possession of a forged instrument and scheme to defraud under NYPL §§ 170.25, 190.65(1)(b) are crimes of fraud. Obstruction of justice under 18 U.S.C. § 1505 involves impeding the proper administration of the law. Accordingly, the crimes of which the petitioner was a victim, NYPL §§ 170.25, 190.65(1)(b), are not similar to the qualifying crime of obstruction of justice.

Counsel further asserts that possession of a forged instrument under NYPL § 170.25 is substantially similar to the federal crime of perjury, defined as, in pertinent part:

Whoever--

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true . . . .


Counsel asserts that conduct in placing a false stamp in the petitioner’s passport constituted perjury. Counsel again fails to engage in the requisite statutory analysis. Possession of a forged instrument under NYPL § 170.25 contains no element of lying under oath, a central component of perjury. The mens rea of these crimes are also dissimilar. Perjury under 18 U.S.C. § 1621 requires only willfulness; possession of a forged instrument under NYPL § 170.25 requires the specific intent to defraud, deceive or injure. As the nature and elements of these two crimes are not substantially similar, possession of a forged instrument under NYPL § 170.25 is not similar to the qualifying crime of perjury.
Petitioner does Not Meet the Regulatory Definition of a Victim of Perjury

Contrary to counsel's claim on appeal, even if NYPL § 170.25 was similar to perjury, the record does not demonstrate that the petitioner meets the regulatory definition of a victim of perjury. To establish that he was the victim of perjury in these proceedings, the petitioner must demonstrate that committed perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring her to justice for other criminal activity; or (2) to further her abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The criminal complaint against was filed in 2003, well after the petitioner's last contact with her and the record lacks any evidence that offense against the petitioner frustrated any law enforcement agency's investigation or prosecution. To the contrary, the offense provided further evidence of her crimes, as charged in count nine of the criminal complaint.

Counsel has also not established that committed perjury to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that possessed a forged instrument in the petitioner's name, for which he paid a large sum of money and that he was subjected to immigration fraud. However, acted outside the legal system and her offense initiated the harm against the petitioner; it did not further any existing abuse or exploitation of him and there is no evidence that exerted undue control over the petitioner.

Possession of a forged instrument under NYPL § 170.25 is not similar to the qualifying crime of perjury. Even if these crimes were similar, the record does not establish that the petitioner was the victim of perjury, as such victimization is defined at 8 C.F.R. § 214.14(a)(14)(ii).

Conclusion

On appeal, the petitioner has not demonstrated that he was a victim of obstruction of justice, perjury, or any other qualifying criminal activity, as defined at section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.