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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



814

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JAN 10 2011

IN RE: Petitioner: [Redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

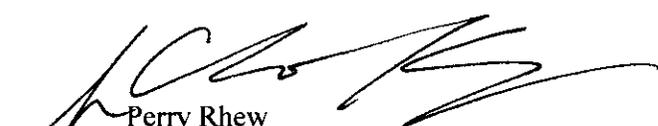


INSTRUCTIONS:

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

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.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that he has been the victim of a qualifying crime or 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 on the Form I-290B, Notice of Appeal or Motion, and copies of documents already included in the record.

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 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states that he last entered the United States in April 2001 without inspection. On March 22, 2007, the petitioner was placed into removal proceedings before the Detroit Immigration Court. On October 4, 2007, an immigration judge ordered the petitioner removed to Mexico *in absentia*, and the petitioner filed an appeal with the Board of Immigration Appeals (BIA). On August 20, 2009, the BIA dismissed the petitioner's appeal.

The petitioner filed the instant Form I-918 U petition on November 6, 2008. On November 18, 2009, the director issued a Request for Evidence (RFE) that the petitioner was the victim of the crime listed on his Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), dated October 7, 2008, and that the crime was similar to any of the specifically enumerated qualifying crimes or criminal activity defined in section 101(a)(15)(U)(iii) of the Act. The director also asked for evidence that the petitioner had suffered substantial physical or mental abuse as a result of being a victim of a qualifying crime or criminal activity. 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 the petitioner was a victim of extortion, blackmail, and felonious assault, all of which are crimes specified at section 101(a)(15)(U)(iii) of the Act. Counsel states further that the petitioner has suffered substantial physical and mental abuse as a result of his victimization because he "is concerned for his safety if he has to return to Mexico as the neighbors that gave money are threatening him." Counsel's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

Qualifying Criminal Activity

The record does not establish that the petitioner was the victim of a qualifying crime or criminal activity. In his November 1, 2008 affidavit, the petitioner reports that in 2001, his father paid J-H-¹ \$11,000 to procure six nonimmigrant employment visas for six individuals, including him. He states that his older brother and father obtained visas, but the other four were never issued. In 2003, the petitioner recounts that his father paid an additional \$26,000 for 26 more visas, which J-H- never obtained. The petitioner recounts that in 2004 his sister asked J-H- about the visas and he showed her a gun and threatened to "call immigration" if she did not stop bothering him. In 2007, the petitioner

¹ Name withheld to protect identity.

reports that U.S. Immigration and Customs Enforcement (ICE) arrested him and placed him in removal proceedings.

When filing his U petition, the petitioner submitted a Form I-918 Supplement B that was signed by [REDACTED]. The criminal act that was indicated at Part 3.1 of the form was "extortion." Part 3.3 of the form listed "extortion," "impersonating police" and "larceny by conversion"; however, [REDACTED] did not provide the statutory citations for the criminal activities that were being or had been investigated or prosecuted. At Part 3.5 of the form, which provides for a brief description of the criminal activity, [REDACTED] wrote: "Victim was told he would receive a work visa in exchange for a sum of money."

In support of the Form I-918, Supplement B, the petitioner submitted a police report, dated April 12, 2008, concerning the alleged crime. The attached police report names six victims, none of whom are the petitioner. The reported offense is identified as "Fraud (Larceny) by Conversion." The report states that the petitioner's father paid money to J-H- for employment visas which J-H- did not procure and that J-H- threatened the petitioner's sister when she inquired about the visas.

The petitioner also submitted two letters. The first was a letter from [REDACTED] who stated that the petitioner was working with his office, [REDACTED] "in a criminal investigation of a local business with claims of extortion, fraud, larceny and assault." The second letter was written by [REDACTED]. [REDACTED] attested to the petitioner's good moral character and integrity, and stated that she had been working with the petitioner and his family for two years in stopping a "criminal scheme that violated numerous federal laws and is under investigation with the Wayne County Prosecutor's office."

Although [REDACTED] listed the crimes of "blackmail" and "impersonating police" on the Form I-918 Supplement B, he failed to provide any statutory citations for these crimes on the form. Additionally, the police report shows that the only crime investigated was "larceny by conversion," which is not one of the crimes specified at section 101(a)(15)(U)(iii) of the Act. Without clarifying information from the certifying agency, we cannot conclude that any law enforcement entity detected, investigated or prosecuted the crimes of extortion or impersonating police in this matter.

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 relevant evidence in this case fails to demonstrate that "fraud (larceny) by conversion" is substantially similar to any of the statutorily enumerated crimes. Counsel claims on appeal that the petitioner was "the victim of criminal activity including blackmail and extortion . . . [and] felonious assault," but counsel submits no new evidence or further legal analysis to support her claim. In response to the director's RFE, counsel asserted that the petitioner was the victim of felonious assault

and extortion, as those crimes are defined under Michigan law, and blackmail, as defined in Black's Law Dictionary. Counsel provides no evidence that the nature and elements of "fraud (larceny) by conversion" are substantially similar to blackmail, extortion or felonious assault. Rather than engaging in the requisite analysis of the nature and statutory elements of fraud (larceny) by conversion, counsel simply asserts that certain actions of J-H-, as recounted by the victims in the police report, are similar to some elements of blackmail, extortion and felonious assault.

The petitioner's law enforcement certification and the attached police report list no statutory citation for the alleged offense of "fraud (larceny) by conversion." Nonetheless, we note that Michigan law defines the offense of embezzlement or fraudulent conversion or use of money, goods, or property obtained by larceny as follows:

LARCENY BY CONVERSION, ETC. - Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny

Michigan Compiled Laws Ann. § 750.362 (West 2009).

Counsel's claim that the petitioner was the victim of a crime similar to felonious assault is not supported by the record. [REDACTED] did not check felonious assault as one of the criminal acts of which the petitioner was a victim in Part 3.1 of the Form I-918 Supplement B certification. While the police report states that J-H- showed the petitioner's sister "his gun and some kind of badge" when she asked him about the visas in 2004, the report does not state that the petitioner was present during this incident. In addition, neither the police report nor the certification lists felonious assault as an offense that was investigated or prosecuted. Most importantly, the nature and elements of the crime identified on the police report, fraud (larceny) by conversion, are not substantially similar to felonious assault, which is defined in Michigan as "assault[ing] another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder" Michigan Compiled Laws Ann. § 750.82 (West 2009). As the definition of these crimes under Michigan law shows, fraud (larceny) by conversion contains no element of assault with a weapon and the nature of larceny is commercial or monetary harm, not physical injury.

The record also fails to demonstrate that the petitioner was the victim of an offense similar to extortion. While [REDACTED] checked "extortion" as one of the criminal acts of which the petitioner was a victim on the certification, he provided no statutory citation to any offense similar to extortion that was being investigated or prosecuted. The police report also does not identify extortion as the alleged crime. The nature and elements of larceny by conversion are also not substantially similar to extortion, which is defined in Michigan as:

MALICIOUS THREATS TO EXTORT MONEY - Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

Michigan Compiled Laws Ann. (MCL) § 750.213 (West 2009).

Again, the nature of fraud (larceny) by conversion is the infliction of commercial or monetary harm, which is not similar to the threatened accusation or injury to compel certain action or inaction that is central to extortion. Fraud (larceny) by conversion also contains no element of malicious threats.

Finally, the record does not establish counsel's claim that the petitioner was the victim of blackmail. In her RFE response, counsel asserted that J-H- engaged in blackmail by "demanding money while threatening to call immigration." [REDACTED] did not check "blackmail" at Parts 3.1 or 3.3 as one of the criminal acts of which the petitioner was a victim on the certification, and the police report does not identify blackmail as the alleged crime. The nature and elements of fraud (larceny) by conversion are also not substantially similar to blackmail. In her RFE response, counsel cited no definition of blackmail under Michigan law, but instead cited the Black's law dictionary definition of blackmail to be "a threatening demand made without justification." We note that under federal law, blackmail occurs when a person "under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing." 18 U.S.C. § 873 (2010). Although larceny by conversion and blackmail both involve monetary or commercial gain, fraud (larceny) by conversion contains no element of unjustified threatening demands or the threat of informing against the victim. Rather, fraud (larceny) by conversion procures the monetary or commercial gain through fraud or embezzlement.

On appeal, counsel reiterates her claim that the petitioner was the victim of felonious assault, blackmail and extortion because certain facts recorded in the police report are similar to those crimes. We recognize that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. *See* 72 Fed. Reg. 179, 53014-42, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still 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 J-H- for felonious assault, extortion or blackmail, and there is no indication that the certifying agency intends to investigate or prosecute J-H- for felonious assault, extortion or blackmail in the future.

The offense identified in this case, fraud (larceny) by conversion, is not similar to the qualifying crimes of felonious assault, extortion and blackmail because the nature and elements of these offenses are not substantially similar. Counsel does not claim that fraud (larceny) by conversion under MCL § 750.362 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 November 1, 2008 affidavit, the petitioner reported that he and his family were arrested and placed in removal proceedings in March 2007. He stated, "They said that someone had reported us to ICE, and I know that it was [J-H-]." The petitioner does not explain in any probative detail why he believes J-H- reported him and his family to ICE and the record contains no other evidence linking his placement in removal proceedings to J-H- and the alleged crime of fraud (larceny) by conversion.

The petitioner further stated:

In addition to great financial loss my family has suffered as a result of [J-H's] crimes, my family and I have suffered substantial mental abuse as a result. My family and I have had countless sleepless nights worrying about my sister's safety and my family's safety. We have many paranoid thoughts being attacked. We can not have a normal life.

My mother in particular suffers a lot by losing her appetite, not able to eat or sleep too much. This in turn makes me worry about her all the time.²

We do not discount the fear and anguish the petitioner may have faced as a result of J-H-'s actions against him, his family and others. Yet even if his own removal proceedings and possible removal from the United States may be attributed to J-H-'s actions, the petitioner has provided no probative details of the harm he claims to have suffered. While he recounts that he has suffered from sleepless nights, worry, and paranoid thoughts, he has not provided any further information 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). His assertion that he cannot lead a normal life is without any probative details, and the record contains no other evidence regarding any physical or mental abuse suffered by the petitioner as a result of the reported offense of fraud (larceny) by conversion.

² The petitioner provided the same information in his July 9, 2009 affidavit.

Conclusion

The police report attached to the Form I-918 Supplement B does not identify the petitioner or otherwise indicate that he was a victim of the alleged crime of fraud (larceny) by conversion. Even if the petitioner's victimization was established, however, the offense of fraud (larceny) by conversion under MCL § 750.362 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 J-H- 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 section 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.