U.S. Citizenship and Immigration Services

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

In Re: 21283473

Date: MAR. 16, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

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

## I. LAW

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

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

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. The Petitioner Was Not the Victim of Qualifying Criminal Activity

#### 1. Relevant Evidence and Procedural History

The Petitioner filed his U petition in June 2016 with a Supplement B signed and certified by the director of the Office of Immigrant Affairs at the [redacted] District Attorney's Office (certifying official). The certifying official checked a box to indicate that the Petitioner was the victim of criminal activity involving or similar to "Other:" and inserted Grand Larceny 3rd in the space provided. The certifying official cited New York Penal Law (NYPL) 155.35 (Grand Larceny, 3rd Degree), 170.25 (Criminal possession of a forged instrument in the second degree), and 190.65.1 (Scheme to defraud in the first degree) as the specific citations for the criminal activity being investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, and any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner reported the crime to the [redacted] Police Department [redacted], discussed the criminal case with employees of the [redacted] District Attorney's Office, and agreed to testify at trial, as required, but does not note the specific involvement of the Petitioner, or the extent to which he was a victim of the investigated criminal activity. In the Petitioner's statements in the record below, he noted that in attempt to legalize his immigration status, he provided $6,000 to D-B-, a travel agent, who claimed they could assist the Petitioner and the Petitioner's fiancée with filing immigration forms.[2] The Petitioner claims that D-B- accepted the payment, but then the Petitioner was not able to frequently reach D-B- by phone or email. Some time later, the Petitioner was shown a news article regarding D-B- and the arrest as a result of D-B- accepting payment for the filing of immigration forms.

The Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. Specifically, the Director analyzed the NYPL statutes that the Petitioner was certified as being the victim of, along with the Petitioner's argument that those charges were substantially similar to 18 U.S.C. § 1505, Obstruction of proceedings before departments, agencies, and committees, and determined that the Petitioner did not establish that he was the victim of a crime substantially similar to obstruction of justice. We note that the Petitioner also claimed, in response to a Request for Evidence (RFE) issued by the Director, that he was a victim

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

[2] We use initials to protect the identity of individuals.

of a crime substantially similar to 18 U.S.C. § 1351, fraud in foreign labor contracting, and that the Director's denial claimed that this was not qualifying criminal activity. However, this was added to the statute through the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), 54 Pub. L. 113-4, 127 Stat. 54.

2. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires U petitioners to demonstrate that they have "been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as certified on a Supplement B from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of qualifying criminal activity includes "the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, *see* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status* (U Interim Rule), 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. Section 101(a)(15)(U)(i)(III) of the Act; *see also* 8 C.F.R. § 214.14(b)(3) (requiring helpfulness "to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . . .").

On appeal, the Petitioner contends that the factual circumstances of the offense in question in the record establish that he was the victim of a violation of 18 U.S.C. §§ 1351 and 1505, for fraud in foreign labor contracting and obstruction of justice. This argument is unavailing, however, because evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that law enforcement actually detected, investigated, or prosecuted a qualifying crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act; 8 C.F.R. § 214.14(a)(5). In this case, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted a qualifying crime as perpetrated against him.

At the outset, and as noted above, neither the Supplement B nor any law enforcement record cite to sections 18 U.S.C. §§ 1351 or 1505 as the crimes investigated as perpetrated against the Petitioner. In part 3.1 of the original Supplement B, the certifying official checked the box indicating that the Petitioner was the victim of criminal activity involving or similar to "Other:," and indicated Grand Larceny 3rd. The certifying official did not otherwise check any box indicating that the Petitioner was the victim of any qualifying crime on the Supplement B, and did not check the corresponding box for obstruction of justice as criminal activity being investigated. We acknowledge that part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Here, however, part 3.3 of the Supplement B, specifically requesting the citation for the crime investigated or prosecuted, indicates sections 155.35 (Grand Larceny, 3rd Degree), 170.25 (Criminal possession of a forged instrument in the second degree), and 190.65.1 (Scheme to defraud in the first degree) of the NYPL.

Moreover, the remaining evidence in the record does not cite to or reference 18 U.S.C. §§ 1351 or 1505. The petitioner bears the burden to demonstrate eligibility by a preponderance of the evidence, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Sections 101(a)(15)(U)(i)(III), 214(p)(1), and 291 of the Act; 8 C.F.R. §§ 214.14(a)(5) and (c)(4). The Petitioner's assertions alone are not sufficient to meet his burden in this regard.

3. Grand Larceny in the 3rd Degree, Criminal Possession of a Forged Instrument in the Second Degree, and Scheme to Defraud in the First Degree are not the Equivalent of or Substantially Similar to the Qualifying Crimes of Obstruction of Justice or Fraud in Foreign Labor Contracting

As stated above, to qualify as a victim for U-1 classification, petitioners must establish that the crime detected, investigated, or prosecuted as perpetrated against them, and of which they are victim, is a qualifying crime or is substantially similar to a qualifying crime. Section 101(a)(15)(U)(iii) of the Act (providing that qualifying criminal activity is "that involving one or more of" the 28 types of crimes listed or "any similar activity in violation of Federal, State, or local criminal law"); 8 C.F.R. § 214.14(a)(9) (providing that the term "'any similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities" at section 101(a)(15)(U)(iii) of the Act). When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. *Id.* Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction's statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense "involved," or was "substantially similar" to, a "qualifying crime or qualifying criminal activity" as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

As discussed above, the certifying official cited sections 155.35 (Grand Larceny, 3rd Degree), 170.25 (Criminal possession of a forged instrument in the second degree), and 190.65.1 (Scheme to defraud in the first degree) of the NYPL on the Supplement B, and the remaining evidence in the record contains no citation to obstruction of justice or fraud in foreign labor contracting, as cited by the Petitioner as being substantially similar criminal activity. The Petitioner has not established that the cited provisions are New York's equivalent to the qualifying crime of obstruction of justice or fraud in foreign labor contracting, nor has he established that the nature and elements of the provisions are substantially similar to those of the qualifying crime of obstruction of justice or fraud in foreign labor contracting.

At time of the incident in question, New York Penal Law § 155.35, Grand Larceny in the 3rd Degree, provided, in pertinent part, that:

> A person is guilty of grand larceny in the third degree when he or she steals property and:
>
> 1. when the value of the property exceeds three thousand dollars.

At the time of the incident in question, New York Penal Law § 170.25, Criminal possession of a forged instrument in the second degree, provided, in pertinent part, that:

> 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.

At the time of the incident in question, New York Penal Law § 190.65.1, Scheme to defraud in the first degree, provided, in pertinent part, that:

> 1. A person is guilty of a scheme to defraud in the first degree when he or she: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (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; or (c) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person, more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter or to obtain property from more than one person, more than one of whom is a vulnerable elderly person as defined in subdivision three of section 260.30 of this chapter, by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons.

New York Penal Law §§ 155.35, 170.25, 190.65.1 (2014).

Conversely, 18 U.S.C. § 1505, Obstruction of proceedings before departments, agencies, and committees, provided, in pertinent part:

> 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--

18 U.S.C. § 1505 (West 2004). Along with 18 U.S.C. § 1351, Fraud in foreign labor contracting, which provided, in pertinent part:

> (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.

18 U.S.C. § 1351 (West 2013).

On appeal, the Petitioner contends that the elements of the criminal activity of which he was a victim substantially relates to the two qualifying crimes indicated above. The Petitioner argues that the Director failed to analyze the perpetrator's conduct and the relation to further qualifying criminal activity beyond the specific criminal statutes that were certified on the Supplement B, and insists that we consider a "broader view" of what elements constitute qualifying criminal activity. In support of these arguments, the Petitioner excerpts sections of 18 U.S.C. § 1505, and states that he was a victim of the perpetrator's attempts to, ""corruptly" 'influence, obstruct or impede' 'the proper administration of the law' 'in a pending proceeding' before USCIS, a 'department or agency of the United States."" However, as noted by the Director, the offenses that were investigated or prosectured are not substantially similar to any qualifying crime. The Petitioner was certified as being the victim of crimes that involved the taking of property exceeding $3,000, and of a scheme to defraud individuals of property. The crimes of grand larceny, criminal possession of a forged instrument, and scheme to defraud do not involve the elements of willfully withholding, misrepresenting, altering, or by other means falsifying any information in a government proceeding found in obstruction of justice. *Compare* NYPL §§ 155.35, 170.25, 190.65.1 *with* 18 U.S.C. § 1505 (West 2004).

The Petitioner further argues that he was a victim of a crime substantially similar to fraud in foreign labor contracting, stating, "the criminal actor in this matter falsely promised the petitioner that he would obtain documents for him that would allow him to be legally employed in the United States," and that, "these assurances of legal employment authorization were made "by means of materially false or fraudulent pretenses, representations or promises." However, as noted in the language of 18 U.S.C. § 1351 above, the purpose of this statute is in relation to anyone who, "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." As noted above, the Petitioner was certified as being the victim of crimes that involved the taking of property exceeding $3,000, and of a scheme to defraud individuals of property. The crimes of grand larceny, criminal possession of a forged instrument, and scheme to defraud do not involve the elements of recruiting, soliciting, or hiring for the purposes of employment by means of materially false or fraudulent pretenses, representations or promises regarding that employment found in fraud in foreign labor contracting. Therefore, the Petitioner has not demonstrated that he was a

victim of the qualifying crime of obstruction of justice, fraud in foreign labor contracting, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act.

Finally, the Petitioner argues that he has awareness of other individuals who were victims of the same criminal activity committed by the same perpetrator who had obtained U nonimmigrant "bona fide determination;" however, the bona fide determination does not imply an approval of a U nonimmigrant petition. *See* 3 *USCIS Policy Manual* C.5(A)(1), https://www.uscis.gov/policymanual, which states that USCIS determines that a principal petition is bona fide if the petitioner has properly filed a complete U nonimmigrant petition, including all required initial evidence, which includes a complete and properly filed Supplement B submitted within 6 months of the certifier's signature, a personal statement from the petitioner describing the facts of the victimization, and USCIS has received the result of the principal petitioner's background checks based upon biometrics. A bona fide determination does not involve a full review of the principal petitioner's case, and shows only that they have met the initial evidentiary requirements of the U nonimmigrant petition.

B. The Remaining Eligibility Criteria for U-1 Classification

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.