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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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



D14

DATE: MAY 11 2011 Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 

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:

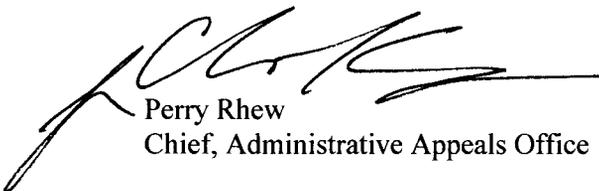


INSTRUCTIONS:

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 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[.]

Section 214(p) of the Act requires the submission of a certified law enforcement certification Form I-918 Supplement B, U Nonimmigrant Status Certification Form (Form I-918 Supplement B) with a Form I-918 U petition, and states, in pertinent part:

(1) 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)(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 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 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 who filed a Form I-589, Application for Asylum and Withholding of Removal, on April 19, 2000. The petitioner's asylum application was referred to the Immigration Court in Los Angeles, California.¹ The petitioner filed the Form I-918 U petition that is the subject of this appeal on March 20, 2008.² On June 2, 2010, the director issued a Notice of Intent to Deny (NOID) the petition 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 NOID 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 petitioner was the victim of perjury and theft. Regarding the crime of perjury, counsel states that the perpetrator of the criminal activity suborned the petitioner's perjury and used the immigration system to exploit and control him. Regarding the crime of theft, counsel states that the petitioner's money was taken through false pretenses, and he not only suffered financial losses but also suffered mental abuse. Counsel maintains that the theft of the petitioner's money was inextricably tied to the perjury that the perpetrator suborned from the petitioner.

The Claimed Criminal Activity

In his March 17, 2008 statement, the petitioner explained that he and his spouse went to a business called [REDACTED] so that they could gain legal immigrant status in the United States. The petitioner stated that he and his spouse paid approximately \$6,000 of a \$7,000 fee to [REDACTED] and that [REDACTED] had him sign a form, which they thought was an application for permanent resident status, but was an asylum application that was filed on his behalf. The petitioner asserted that [REDACTED] filing of the asylum application resulted in him and his wife being placed in removal proceedings, and that they were the victims of [REDACTED] immigration fraud.

The statutory citations for the criminal activity that were listed on the law enforcement certifications (Form I-918 Supplement B) were California Penal Code (CPC) sections 487 (grand theft) and 664/127 (procuring another to commit perjury).

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

¹ The petitioner's next hearing date before the Los Angeles Immigration Court is scheduled for June 14, 2011.

² The petitioner's spouse also filed a Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient, on his behalf on March 20, 2008, which was denied on August 27, 2010. The petitioner's spouse did not appeal the denial of that petition.

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 states that the theft of the petitioner’s money was intertwined with the crime of perjury. Although the two offenses occurred within the same fraudulent scheme, counsel has not demonstrated that the nature and elements of theft under CPC § 487 are substantially similar to the nature and elements of perjury under CPC §§ 118 and 127. In addition, counsel does not relate the crime of theft under California law to any of the other statutorily enumerated crimes at 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 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.

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 [REDACTED] 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 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 [REDACTED] 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 petitioner submitted a news release from the Orange County District Attorney's Office regarding a criminal complaint that was filed in 2003, over two 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 provide further evidence of [REDACTED] malfeasance.

Counsel has also not established that [REDACTED] 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 [REDACTED] 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 [REDACTED], the exploitation resulted from fraud, not from further perjury under C.P.C. § 118. Accordingly, we do not find that [REDACTED] 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.

The Record does not Contain a Properly Certified Law Enforcement Certification (Form I-918 Supplement B)

Beyond the decision of the director, the petition may not approved because the record does not contain a properly certified law enforcement certification (Form I-918 Supplement B) to establish the petitioner's helpfulness to law enforcement authorities, as required by section 214(p)(1) of the Act. See 8 C.F.R. § 214.14(c)(2)(i). As stated previously, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, 8 C.F.R. § 214.14(c)(4).

The record contains a Form I-918 Supplement B, dated January 1, 2008 and purportedly signed by [REDACTED] an Investigator with the District Attorney's Office, Orange County, California; and a Form I-918 Supplement B, dated October 6, 2008 that was signed by [REDACTED] whose identifying information is not included on the form. Neither of these law enforcement certifications suffices, as they each contain deficiencies.

The Form I-918 Supplement B, dated January 1, 2008 and purportedly signed [REDACTED] is insufficient because the signature on the form does not match his signature on the "U Visa Certification

Form” dated July 18, 2005 and submitted with the January 1, 2008 Form I-918 Supplement B. That Supplement B also does not provide any information at Parts 3.1, 3.3, 3.5 and 3.6 regarding the criminal acts, including the statutory citations for the offenses, a description of the offenses, and a description of any known or documented injury to the petitioner. The Form I-918 Supplement B, dated October 6, 2008, lists [REDACTED] as the certifying official, but is signed by an individual named [REDACTED], who is not identified as the certifying official or head of the certifying agency in Part 2. [REDACTED] Form I-918 Supplement B also does not provide any information at Parts 3.5 and 3.6 regarding the criminal acts investigated or prosecuted and the petitioner’s involvement; and a description of any known or documented injury to the petitioner. In addition, the crime of perjury and the criminal statutory citations are handwritten on Parts 3.1 and 3.3 with a different handwriting than that of [REDACTED] signature.

As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), he has not established his 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.

Conclusion

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. The petitioner has also failed to submit the law enforcement certification required by section 214(p)(1) of the Act.³

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.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003).