

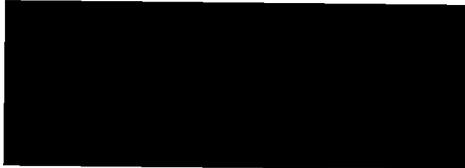
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D14



Date: **OCT 18 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 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 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 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 at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a Notice of Appeal (Form I-290B), a brief and copies of documentation previously provided.

*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[.]

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

(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 . . . 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 India who, on February 10, 1998, was admitted to the United States as an H-1B nonimmigrant. The petitioner remained in the United States passed her authorized stay, which expired on June 9, 2000. On June 3, 2010, the petitioner filed the instant Form I-918 U petition. On August 25, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On February 10, 2011, 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 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, perjury, extortion, witness tampering and obstruction of justice.

#### *The Claimed Criminal Activity*

The petitioner claimed in her undated affidavit that, in 2001, she met J\_I\_ who promised he would

arrange for employment and a green card in return for \$1,500 to start the case.<sup>1</sup> The petitioner claimed that she paid the money to J\_I\_ and that, after frequent calls and meetings, he did not arrange for her employment but kept promising that her that everything would be taken care of prior to expiration of the deadline. The petitioner claimed that J\_I\_ stopped answering his phone and she then heard rumors that he was in trouble with the law. The petitioner claimed that J\_I\_'s office was closed and she read that he had been arrested for fraudulent activities. The petitioner claimed that two police officers came to her house in order to interview her about J\_I\_'s activities. The petitioner claimed that the officers informed her that J\_I\_ was a thief and had filed fraudulent documentation on behalf of clients. The petitioner claimed that she informed the officers that she was unaware of J\_I\_'s activities, that she did not do anything wrong and had not told J\_I\_ to do anything wrong on her behalf. The petitioner claimed that she cooperated with the officers and attended the grand jury. The petitioner claimed that she is afraid that J\_I\_ will seek revenge against her and her family because she testified against him.

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED] (certifying official) of the U.S. Attorney's Office, Northern District of Illinois. The criminal acts at Part 3.1 were indicated as criminal activity involving, or similar to, other: fraud. The statutory citations for the criminal activity at Part 3.3, were cited as sections 1546(2) (fraud and misuse of visas, permits and other documentation) and 1962(c) (racketeering) of Title 18 of the U.S. Code (U.S.C.)<sup>2</sup>.

Fraud and misuse of visas, permits and other documentation under 18 U.S.C. § 1546 provides in pertinent part:

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has

<sup>1</sup> Name withheld to protect the identity of the individual.

<sup>2</sup> The AAO notes that a typographical error occurred when the certifying officer cited section 1546(c) because it does not relate to criminal activity but to lawfully authorized investigative, protective, or intelligence activity of a various branches of law enforcement.

been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall be fined under this title or imprisoned . . . or both.

(b) Whoever uses—

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 . . .

(West 2011)

18 U.S.C., § 1962 provides, in pertinent part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(West 2011)

At Part 3.5, [REDACTED] described the criminal activity being investigated or prosecuted as an immigration fraud case in which the target misled the petitioner and others seeking legal immigration into the United States by filing false documents on the immigrants' behalf. At Part 3.6, [REDACTED] described the known or documented injury to the petitioner as "the target filed an application for immigration benefits on behalf of the victim which contained false information. The victim was unaware that the application contained false information. The victim was denied the immigration benefits sought. The victim paid the target \$1,500 for his services." At Part 4.5, [REDACTED] described the helpfulness of the petitioner as providing information requested by the investigating agency and the prosecution. [REDACTED] indicated that the case had been resolved and the target of the investigation pled guilty.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted an article from the [REDACTED] and a press release from the Department of Justice, which described the indictment and conviction of J\_I\_ and his associates.

The petitioner also submitted a Northern District of Illinois District Court indictment which lists the charges brought against J\_I\_, as well as a plea agreement and conviction record for J\_I\_.

As noted previously, the director found that the petitioner was not a victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act.

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

### *Analysis*

Counsel states in her brief that J\_I\_ engaged in extortion, witness tampering, and obstruction of justice, but fails to establish that those crimes are substantially similar to the statutory citations that the certifying official provided on the Form I-918 Supplement B.

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 2011). The crimes of fraud and misuse of visas, permits or other documentation as well as racketeering are 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." Neither fraud and misuse of visas, permits or other documentation nor racketeering contains a similar element of consent induced by force, fear or under color of official right.

Accordingly, the crimes of fraud and misuse of visas, permits or other documentation as well as racketeering are not similar to the qualifying crime of extortion because the nature and elements of the crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

As noted above, although the crimes of perjury, witness tampering and obstruction of justice are listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime the certifying official did not indicate on the Form I-918 Supplement B that the petitioner was a victim of these crimes. The certifying official describes the criminal activity against the petitioner as immigration fraud due to J\_I\_ filing false documents for immigration benefits which were then denied to the petitioner after she paid J\_I\_ \$1,500. The certifying official indicates that the petitioner was unaware of the false statements made on her behalf. Even if the petitioner had established that the crimes of perjury, witness tampering and obstruction of justice were investigated or prosecuted, the relevant evidence does not establish that the petitioner was the victim of such crimes.

18 U.S.C. § 1621 defines perjury as:

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 and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(West 2011)

Under 18 U.S.C. § 1622 a person is guilty of subornation of perjury if he or she willfully procures another person to commit perjury. (West 2011).

Witness tampering under Title 18 provides, in pertinent part:

- (a) (1) Whoever kills or attempts to kill another person, with intent to—
- (A) prevent the attendance or testimony of any person in an official proceeding;
  - (B) prevent the production of a record, document, or other object, in an official proceeding; or
  - (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
- shall be punished as provided in paragraph (3).
- (2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

.....  
(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings;

.....  
(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

.....



(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

- (1) attending or testifying in an official proceeding;
- (2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings;
- (3) arresting or seeking the arrest of another person in connection with a Federal offense; or
- (4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

....

(West 2011).

Obstruction of justice under Title 18 of the U.S. Code has many definitions all of which require intent to affect official proceedings. (West 2011).

To establish that she was the victim of the qualifying crimes of perjury, witness tampering or obstruction of justice in these proceedings, the petitioner must demonstrate that J\_I\_ procured her to commit perjury, or committed witness tampering or obstruction of justice 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).

The evidence in the record does not demonstrate that J\_I\_ suborned the petitioner to commit perjury, committed witness tampering or obstructed justice 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 J\_I\_ is the Form I-918 Supplement B which indicates that J\_I\_ filed fraudulent documentation on behalf of immigrants. As the Form I-918 Supplement B indicates that J\_I\_ was investigated and prosecuted for immigration fraud (and), there is no reason to believe that suborning the petitioner to commit perjury would avoid or frustrate the prosecutions efforts, as the crime would only provide further evidence of J\_I\_'s malfeasance. The record does not indicate that J\_I\_ suborned the petitioner's perjury or committed witness tampering or obstruction of justice to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity.

Counsel has also not established that J\_I\_ committed a perjury offense, witness tampering or obstruction of justice to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. Apart from filing applications with false statements with U.S. Citizenship and Immigration Services (USCIS), the relevant evidence does not indicate that any of J\_I\_'s subsequent dealings with the petitioner involved perjury, witness tampering or obstruction of justice. The record shows that if perjury, witness tampering or obstruction of justice were committed, the perjury, witness tampering or obstruction of justice 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 J\_I\_, the exploitation resulted from fraud as well as J\_I\_'s subsequent misleading interactions with the petitioner, not from any perjury, witness tampering or obstruction of justice. Accordingly, we do not find that J\_I\_ suborned the petitioner's perjury, committed witness tampering or obstruction justice, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. Counsel also claims that the petitioner was the victim of theft; however, theft is not a crime enumerated at section 101(a)(15)(U)(iii) of the Act.

### *Remaining Eligibility Criteria*

The petitioner's supporting documentation establishes J\_I\_'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, extortion, witness tampering or obstruction of justice.

The record does show that the petitioner was helpful to the certifying agency in its investigation of J\_I\_ and that she possessed some information about J\_I\_'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.

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.