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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: FEB 14 2012 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 (“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. 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.

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.

* * *

(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 (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, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States without being admitted or paroled on or around April 2001. The petitioner states that she began working for [REDACTED] in Portland, Oregon, in or about October 2003 and stopped working for the company when it was raided by officers from U.S. Immigration and Customs Enforcement (USICE) in June 2007.

On October 23, 2008, the Deputy Sheriff of the Multnomah County, Oregon Sheriff's Office certified that the petitioner was the victim of criminal activity involving peonage (involuntary servitude), perjury, trafficking, forced labor as well as attempt, conspiracy or solicitation to commit the named crimes, committed by [REDACTED]

The petitioner filed the instant Form I-918 U petition on April 24, 2009. On June 10, 2010, the director issued a Request for Evidence (RFE) 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 denied the petition finding that the petitioner 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, the petitioner contends through counsel that she was the victim of the qualifying crimes of involuntary servitude, trafficking, perjury and forced labor, and that she meets the remaining requirements for U nonimmigrant classification. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Law Enforcement Certification (Form I-918 Supplement B)

At Part 3.3 of the Form I-918 Supplement B, the certifying official provided the Oregon Revised Statutes (ORS) citations for involuntary servitude, trafficking, and perjury, as well as the U.S. Code (U.S.C.) citation relating to forced labor. At Part 3.5 of the Form I-918 Supplement B where the certifying official briefly describes the criminal activity and the victim's involvement, the certifying official wrote: "The individual is a victim of the above crimes for which [REDACTED] is being investigated." At Part 4.5 where the certifying official provides any additional information, he stated: "The victim has been given information and an interview about what happened." Although the certifying official confirmed that the petitioner suffered physical and emotional injuries while working at [REDACTED] he did not explain how any particular events at [REDACTED] resulted in the certified qualifying crimes being committed against the petitioner.

In response to the director's RFE, the petitioner submitted an undated and unsigned letter from the certifying official that also did not provide any additional information regarding the petitioner's victimization. In that letter the certifying official identified the petitioner as a former [REDACTED] worker who experienced horrible working conditions, noting that the petitioner was an important witness who was cooperating with law enforcement authorities; he, however, did not elaborate on her victimization.¹ Counsel's assertion on appeal that that the opinion of law enforcement as provided on a Form I-918 Supplement B must be respected and given deference is unpersuasive. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS the authority to determine, in its sole discretion, the evidentiary value of evidence, including the Form I-918 Supplement B. Here, the Form I-918 Supplement B and supporting documents fail to demonstrate that the petitioner was the victim of any qualifying criminal activity cited by the certifying official.

Perjury

Under ORS § 162.065(1), "[a] person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false." (West 2012). Here, the certifying

¹ The certifying official states: "The MCSO report number 09-400495 is attached"; however, that report is not in the record of these proceedings.

official does not explain how the petitioner was the victim of perjury. In her declaration, dated April 17, 2009, the petitioner indicated that prior to her employment with [REDACTED], she obtained a fake social security number and “green card” to have a better chance of supporting her family. She further explained that when she applied for a job with [REDACTED], she presented these documents to the person at the [REDACTED] office who helped her complete the application. According to the petitioner, the person who assisted her never asked her if she was legally permitted to work or if her documents were real. The petitioner stated further that she did not know what questions were asked on the application, as the person who assisted her only asked her to sign it and then told her where to appear for work. Although the record does not establish how the petitioner was the victim of perjury, if it was related to her [REDACTED] job application, she would have been culpable of misrepresenting her authorization to work because she present fraudulent documentation to [REDACTED]. The petitioner, therefore, could not be recognized as a victim of the crime of perjury. 8 C.F.R. § 214.14(a)(14)(iii) (If a petitioner “is culpable for the qualifying criminal activity being investigated or prosecuted[, she is] excluded from being recognized as a victim of qualifying criminal activity.”).

Involuntary Servitude

Under ORS § 163.263(1):

A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

- (a) Abusing or threatening to abuse the law or legal process;
- (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
- (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
- (d) Threatening to collect an unlawful debt; or
- (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing. (West 2012)

Additionally, the Supreme Court has held that:

the term ‘involuntary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or

physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

United States v. Kozminski, 487 U.S. 931, 952 (1988).

In her April 17, 2009 declaration, the petitioner explained that she applied for a job at [REDACTED] and was hired in or about October 2003 and remained working there until the USICE raid of [REDACTED] in June 2007. The certifying official does not explain how the petitioner was the victim of involuntary servitude, and the record does not show that [REDACTED] abused or threatened to abuse the law or the legal process as a means to force the petitioner to work for the company, as contemplated by ORS § 163.263(1)(a). To the extent that [REDACTED] abused the law by illegally hiring unauthorized workers and by subjecting them to health and safety violations, the evidence does not show that these illegal practices were employed to secure the petitioner's labor, as she stated that she voluntarily chose to work for the company.

Second, the record does not show that [REDACTED] forced the petitioner to work by instilling in her a fear that the company would withhold from her the necessities of life, as contemplated by ORS § 163.263(1)(e). The petitioner claims that her supervisors were mean, monitored her and her coworkers, told them to move faster and threatened to fire them if they missed deadlines. However, the evidence does not show that these threats instilled in the petitioner a fear that [REDACTED] would withhold lodging, food, clothing, or other necessities from her, such that she felt forced to work for the company.

Third, the evidence does not show that the petitioner was forced to work for [REDACTED] by the use or threat of: (1) physical restraint; (2) physical injury; or (3) coercion through law or the legal process. . See *Kozminski*, 487 U.S. at 952. Specifically, the petitioner describes the poor working conditions at Del Monte that caused harm to her eye and hips, but she does not contend that [REDACTED] officials forced her to work by physically restraining or injuring her, or threatening her with these harms. The petitioner stated in her declaration that she put up with the poor working conditions because she did not want to lose her job; she did not state that she remained working for [REDACTED] because officials there threatened to report her to immigration law enforcement authorities or that [REDACTED] otherwise used or threatened to use the legal process to force her into servitude.

Trafficking

Under ORS § 163.266:

(1) A person commits the crime of trafficking in persons if the person knowingly:

(a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means,

another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or

(b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.26. (West 2012)

The certifying official does not detail how the petitioner was a trafficking victim, and the record also does not support a claim of such victimization. A showing of involuntary servitude is necessary in order to establish victimization under the Oregon trafficking statute. ORS § 163.266(1)(a). As the petitioner has not made that demonstration, she has not established that she was the victim of trafficking.

Forced Labor

Under 18 U.S.C. § 1589:

- (a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—
 - (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
 - (2) by means of serious harm or threats of serious harm to that person or another person;
 - (3) by means of the abuse or threatened abuse of law or legal process; or
 - (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).
- (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).
- (c) In this section:

- (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- (2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

* * *

(West 2012)

The certifying official provides no details about the petitioner being subjected to forced labor by [REDACTED] and the record does not show that [REDACTED] obtained the petitioner’s labor by means described at 18 U.S.C. § 1589(a). As noted previously, the petitioner applied and was hired for a job at Del Monte and remained an employee there until the USICE raid of the [REDACTED] plant in June 2007. She did not allege in her statement, the certifying official did not establish, and the record contains no other evidence that the petitioner’s employment was coerced such that she was subjected to forced labor.

Conclusion

The petitioner has not met her burden of showing that she was the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act. She, therefore, also failed 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 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. Accordingly, the appeal will be dismissed.

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