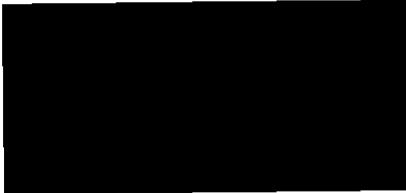


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D14

Date: **JUL 06 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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 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. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) **Petitioning Procedures for Section 101(a)(15)(U) Visas**
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 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).

....

(4) **Credible Evidence Considered**

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

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

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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 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.

....

(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 . . . 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.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Guatemala. The petitioner claims that she entered the United States without inspection, admission or parole in December 1999. On December 22, 2008, the petitioner filed the instant Form I-918 U petition. On January 13, 2010 and July 9, 2010, the director issued Requests for Evidence (RFEs) to which the petitioner, through counsel, submitted timely responses. On June 13, 2011, after considering the evidence of record, including counsel's responses to the RFEs, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the petitioner was a victim of the qualifying crimes of perjury, involuntary servitude and trafficking; and that the petitioner suffered substantial physical and mental abuse as a result of those crimes. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims on appeal fail to establish the petitioner's eligibility.

Reported Criminal Activity

The U Nonimmigrant Status Certification (Form I-918, Supplement B, or law enforcement certification), which was signed by [REDACTED] (certifying official) of the Multnomah County, Oregon Sheriff's Office on December 4, 2008, indicates that the petitioner was the victim of criminal activity involving, or similar to perjury, trafficking, forced labor, involuntary servitude and the conspiracy and attempt to commit any of those crimes. At part 3.3 of the law enforcement certification, the certifying official stated the following sections of the Oregon Revised Statutes as the criminal activity being

investigated or prosecuted:

Perjury under section 162.065 of the Oregon Revised Statutes (O.R.S.):

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.

False swearing under section 162.075 of the O.R.S.:

A person commits the crime of false swearing if the person makes a false sworn statement, knowing it to be false.

Involuntary servitude under section 163.263 of the O.R.S.:

(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.

Trafficking under section 163.266 of the O.R.S.:

(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.

At Part 3.5, the certifying official described the criminal activity being investigated and/or prosecuted as: “[The petitioner] was the victim of and assisted with the investigation of acts of forced labor, involuntary servitude, trafficking in persons, unlawful hiring and unlawful employment practices by [REDACTED]” At Part 3.6, the certifying official described the known or documented injuries to the petitioner as: “[The petitioner] suffered physical and mental deprivation during her employment. She was pushed, threatened, punished, prevented from using the restroom, deprived of breaks and was not paid for work.” At Part 4, the certifying official described the helpfulness of the petitioner as “gave a statement to the [REDACTED]”

The certifying official submitted a Multnomah County Sheriff’s Office special information form noting that he had interviewed the petitioner on December 4, 2008, at the request of her immigration lawyer “to investigate the possibility that [the petitioner] was a victim of human trafficking and to possibly offer more evidence to the [REDACTED]” In a case number report accompanying the special information form, the certifying official recounted the petitioner’s following, pertinent statements. The petitioner applied for work with [REDACTED] after she was told that [REDACTED] hired individuals from other countries without lawful immigrant status in the United States. According to the petitioner, a desk worker at [REDACTED] completed the employment application for the petitioner when she informed them that she could not read or write. The petitioner signed the bottom of the application which the desk worker had completed. The petitioner reported that she began working two days later in June 2006 and worked for them for a year. The petitioner stated that she had to stop working for them because it was too difficult. The petitioner reported that she cut different vegetables after removing them from blocks of ice; she worked 12-14 hour shifts without being compensated for overtime; she was not permitted to use the bathroom when needed and had to wait until lunch time; the supervisors would yell at the workers and threaten to fire them if they did not work the required amount of hours and did what they were told; the supervisors yelled at her in Spanish, which she did not understand; the working conditions were horrible and the workers were always soaking wet; she had to work even if she was sick; she was told by other Guatemalans that Guatemalans were forced to do the tougher jobs; and if she did not work fast enough she would be sent to a part of the factory that had worse working conditions than her original job.

In the petitioner’s March 21, 2008 and December 16, 2008 identical self-affidavits, the petitioner stated that she first applied for a job in the United States in June 2006 and went to the [REDACTED] because she heard that they accepted fake documents. The petitioner stated that she presented obviously fake documents to a woman named D-¹ who took copies of them. The petitioner stated that she was interviewed for a job and began working for [REDACTED] two days later. The petitioner stated that she worked 5 days a week for 12 hours a day, but never received overtime pay even though she often worked 60 hours per week. The petitioner stated that she requested an 8 hour shift and was informed that she could not have an 8 hour shift and if she left after only 8 hours she would not have a job the next day. The petitioner

¹ Name withheld to protect identity of individual.

stated that the supervisors and managers treated her poorly, punished her and isolated her from other workers. The petitioner stated that, while she was cutting fruit, supervisors would yell at her to hurry up and work faster. The petitioner stated that if she was unable to move quicker her supervisors would scream at her and remark that "Guatemalans are very lazy" and on one occasion when she was cutting onions incorrectly a supervisor called her a "Guatemalan slob." The petitioner stated that when she did not move fast enough she would be sent into the cooler area to remove broccoli from boxes of ice, which was a way of punishing her. The petitioner stated that it was very cold every day and that only Guatemalans worked in the cooler. The petitioner stated that she was also punished by being isolated from other workers. The petitioner stated that on one occasion her supervisor pushed her and pulled her into the cold storage area. The petitioner stated that she would be punished by making her clean up after other workers. The petitioner stated that she was humiliated and the "punishment work" was much harder. The petitioner stated that when she cried she was told that she was just a lazy Guatemalan and was only crying in an attempt to get out of work. The petitioner stated that the protective clothing would get wet and she would have to work the entire shift in wet clothing and was constantly sick from working in wet clothes. The petitioner stated that she often had to work even though she was sick and was running a fever. The petitioner stated that she had to pay for gloves every time they ripped from working with a knife. The petitioner stated that during the 10 to 12 hour shift she got only one 15-20 minute lunch break, with no other breaks during the shift. The petitioner reported that she was supposed to have a 30 minute break but the supervisors would tell her to hurry and get back to work and she would eat as fast as she could. The petitioner reported that she required permission to use the bathroom and on the few occasions she asked to use the bathroom she was usually denied permission. The petitioner stated that on 4 or 5 occasions she was not paid for the hours that she worked and when she complained they refused to pay her. The petitioner stated that she was never granted a day off even when she requested one. The petitioner reported that she was too sick to work on two occasions and that she was not permitted to work the next day and was told that she had to work even when she was sick. The petitioner stated that she would cry at home when she returned from work. The petitioner reported that she felt trapped because, even though the conditions were horrible and the supervisors were mean, she had no other way to work. The petitioner stated that the horrible working conditions caused her constant emotional stress and physical suffering.

In a third self-affidavit, dated April 6, 2010, the petitioner repeated many of her previous statements and added that her employers knew she was not "legal" and that is why she had so many problems. The petitioner also noted that she speaks very little Spanish and no English. The petitioner indicated that the supervisors would threaten and degrade her because they knew that she was illegal. The petitioner reported that she was told she would be fired and would be unable to find another job if she did not work fast or hard enough. The petitioner indicated that she was already depressed and she became more depressed while working at [REDACTED]. The petitioner added that she lost weight because she would sometimes work for 12 hours without food and her hands, back and legs hurt from working in the conditions. The petitioner reported that she informed the Portland Police Department all about the system and working conditions at [REDACTED] in November 2008.

The petitioner also submitted several documents relating to an investigation of, and class action lawsuit against, [REDACTED]. In an October 15, 2007 news release, the Oregon Department of Consumer and Business Services stated that the Oregon Occupational Safety and Health Division intended to fine [REDACTED] and an affiliated staffing agency \$28,700 and cited them for multiple safety and health violations as a result of an inquiry into working conditions at the food packaging plant at which the petitioner worked. The petitioner also submitted a news article regarding the investigation and lawsuit.

The petitioner also submitted a June 8, 2007 affidavit from [REDACTED], a special agent with the U.S. Immigration and Customs Enforcement (USICE) Office of Investigations, which was filed before the U.S. District Court for the District of Oregon in order to obtain a search warrant of the [REDACTED] plant where the petitioner was employed. In his affidavit, [REDACTED] describes in detail his investigation into [REDACTED] employment of undocumented workers through the services of [REDACTED]. The record also includes articles on the investigation of worker-safety at the [REDACTED] and the June 12, 2007 immigration raid at the plant, as well as articles on human trafficking and involuntary servitude.

Analysis

Counsel claims that the petitioner is the victim of perjury and false swearing because [REDACTED] falsely swore to her immigration status when completing her employment form; and that the petitioner is the victim of perjury and false swearing because [REDACTED] perjury and false swearing were part of an intentional illegal hiring practice that made the petitioner vulnerable to exploitation, abusive working conditions, and undue control. The record does not support counsel's claim.

Even if [REDACTED] knew that the petitioner's documents were fake and committed perjury in completing any employment-related documentation, the relevant evidence does not demonstrate that [REDACTED] or [REDACTED] committed perjury to avoid or frustrate efforts by law enforcement personnel to bring them to justice for other criminal activity, or that [REDACTED] committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system, as required by the regulation at 8 C.F.R. § 214.14(a)(14)(ii).

The record reflects that [REDACTED] did not have a prior relationship with the petitioner and if perjury occurred, it was solely committed for the purpose of hiring the petitioner. Apart from [REDACTED] possible perjury in completing employment-related documentation, the relevant evidence does not indicate that any of [REDACTED] subsequent dealings with the petitioner involved perjury. The record shows that [REDACTED] completed the employment application and Form I-9 upon the company's initial meeting with the petitioner and, thus, the perjury initiated the hiring of the petitioner, but 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 deplorable working conditions at [REDACTED] factory, not from further perjury under O.R.S. § 162.065.

In addition, the petitioner cannot be considered a victim of perjury because she herself is culpable for this offense. The applicant obtained employment with [REDACTED] by knowingly providing false documentation of her authorization to be legally employed. She is consequently culpable of misrepresenting her authorization to work, and she cannot be recognized as a victim of the crime of perjury. See 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.”). The petitioner is, therefore, not the victim of the qualifying crime of perjury.

On appeal, counsel asserts that the petitioner was the victim of involuntary servitude under Oregon law because [REDACTED] forced the petitioner to perform services through the threatened abuse of the law and legal processes through intentional illegal hiring; violations of workplace safety and wage and hour laws; by threats to fire her; and by threatening and refusing to provide life necessities, if she did not comply with the illegal conditions of the job.

The record does not support counsel’s claims. Counsel asserts that the petitioner provided services to [REDACTED] because she feared that if she did not work she would be fired and, as an illegal immigrant, be unable to find other employment, which would result in her loss of income and ability to afford the basic necessities, defined, but not limited to lodging, food and clothing. The threat of possible termination of the petitioner’s employment does not constitute involuntary servitude under Oregon law. The record does not show that, in the petitioner’s case, [REDACTED] threat of possible termination of the petitioner’s employment and poor working conditions were equivalent to instilling a fear in the petitioner that she would be deprived of life necessities such that she was a victim of involuntary servitude under Oregon law.

Counsel asserts that the petitioner was forced to work for [REDACTED] by the abuse or threatening to abuse the law of legal process by knowingly hiring illegal immigrants and using their vulnerabilities to put their health and safety at risk. Counsel asserts that [REDACTED] was aware of the petitioner’s illegal status and accepted her fake documents to complete the necessary forms for the petitioner. Counsel asserts that the petitioner only endured the horrible working conditions at [REDACTED] because she was placed in fear because she would either (1) be left jobless in a country far from home; or (2) be deported back to Guatemala. There is no evidence that [REDACTED] forced or attempted to force the petitioner to work by abusing or threatening to abuse the law or legal process. Contrary to counsel’s assertions on appeal, the petitioner has never stated that anyone at [REDACTED] threatened her with anything other than being fired if she was unable to work. The petitioner does not describe any incident where [REDACTED] employees specifically threatened her with arrest or deportation, or any other form of abuse of the law or legal process. Consequently, the record fails to support counsel’s claims that the petitioner was the victim of the qualifying crime of involuntary servitude, under Oregon law.

The record also does not support counsel’s claim on appeal that the petitioner was the victim of trafficking because [REDACTED] obtained the petitioner’s services knowing she would be subjected to workplace conditions that would include involuntary servitude. Counsel asserts that [REDACTED] benefitted financially from forcing the petitioner to work without adequate pay and by not

having to ensure a safe and healthy work environment. However, a showing of involuntary servitude is necessary in order to establish victimization under the Oregon trafficking statute. O.R.S. Ann. § 163.266 (2009). As the petitioner has not made that demonstration, she has not established that she was the victim of trafficking.

The petitioner's supporting documentation, including Mr. Trimm's affidavit, the information regarding the class action lawsuit against [REDACTED], and the information regarding fines leveled against [REDACTED] for workplace violations, establish [REDACTED] illegal practices and mistreatment of workers while the petitioner was employed with the company. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that she was herself subjected to perjury, involuntary servitude, trafficking, or any other qualifying criminal activity.

The record does show that the petitioner was helpful to the certifying agency in its investigation of [REDACTED] and that she possessed some information about [REDACTED] hiring practices, mistreatment of its workers and unsafe facilities. While the petitioner's assistance in these legal actions against [REDACTED] may have been valuable and was laudable, counsel has not demonstrated that any offenses committed against the petitioner by [REDACTED] constituted qualifying criminal activity under subsection 101(a)(15)(U)(iii) of the Act.

Counsel states in her brief that a letter from Senator Ron Wyden to the Vermont Service Center, dated June 24, 2011, raises questions about "the fairness and propriety of the adjudication of [the petitioner's case]." While the allegation contained in Senator Wyden's letter is serious, the record lacks any evidence of illegal or inappropriate contact between the Vermont Service Center and any USICE officer in regards to this petition. The AAO's decision to dismiss the appeal is based upon its *de novo* review of the proceedings. *See Soltane v. DOJ, Supra.* As discussed in this decision, the petitioner failed to establish that she was the victim of the crimes certified on the Form I-918 Supplement B.

Remaining Eligibility Criteria

Being a victim of qualifying criminal activity is a threshold requirement for the remaining U nonimmigrant eligibility criteria at subsection 101(a)(15)(U)(i) 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 section 101(a)(15)(U)(i)(I) – (IV) of the Act, and her petition must remain denied.



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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.