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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

PUBLIC COPY



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Date: **MAY 09 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 with the field office or service center that originally decided your case by filing a 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, 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. 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).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who states that he last entered the United States in 1992 without being inspected, admitted or paroled by an immigration officer. The petitioner submitted an asylum application in January 2003, and he was placed into removal proceedings when his asylum application was referred to the Los Angeles, California Immigration Court. The petitioner remains in proceedings before the Los Angeles Immigration Court and his next hearing date is scheduled for June 15, 2012.

The petitioner filed the instant Form I-918 U petition on March 31, 2008. On December 2, 2009, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition because the petitioner was not the victim of qualifying criminal activity and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief statement asserting, in part, that the perpetrator procured the petitioner to commit perjury and the petitioner's law enforcement certification (Form I-918 Supplement B) indicates that the criminal activity is one of the enumerated crimes at section 101(a)(15)(U)(iii) of the Act.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

In a January 12, 2006 affidavit in the record, the petitioner averred that in approximately June 2002 he sought the services of a *notario*, [REDACTED] about legalizing his status in the United States. The petitioner stated that [REDACTED] advised him that he was eligible for lawful permanent residence status, so he retained [REDACTED] for an initial fee of \$1,000. The petitioner stated that on an undisclosed date, he received an interview notice from the immigration office in Anaheim, California. The petitioner recounted that when he went to the Anaheim immigration office, he did not know why he had an interview but then realized that [REDACTED] had filed an asylum application on his behalf. According to the petitioner, the interviewing immigration officer told him that he had signed the asylum application under penalty of perjury, and that the application indicated that that he feared returning to Mexico. The petitioner stated that he did not fear going back to Mexico, but he had no place to go in that country. According to the petitioner, the asylum application that [REDACTED] had him sign stated something that was untrue. The petitioner indicated that he was placed into removal proceedings but did not realize that [REDACTED] had committed fraud against him until [REDACTED] was arrested. The petitioner stated that [REDACTED] and his associate, [REDACTED] did not threaten to cause him any harm during his dealings with them.

The Form I-918 Supplement B in the record was certified by [REDACTED] Orange County, California (certifying official). The criminal acts indicated at Part 3.1 were perjury, subornation to commit perjury, extortion, as well as solicitation and attempt to commit extortion and perjury. At Part 3.3, the certifying official listed the statutory citations of the crimes as California Penal Code (C.P.C) §§ 487 (grand theft), 524 (attempted extortion), and 664/127 (attempted subornation of perjury). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated: "Procuring another to commit perjury, extortion and grand theft [sic]." Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6: "Financial loss; Posttraumatic Stress Disorder."

Attached to the Form I-918 Supplement B was a letter from [REDACTED] an [REDACTED] [REDACTED] identified the petitioner as a witness against [REDACTED] and described the petitioner's interactions with [REDACTED] just as the petitioner had in his January 2006 affidavit. [REDACTED] stated that [REDACTED] had victimized thousands of individuals by telling them, in part, that "Immigration" would go to their homes and physically deport them if they did not pay his fees. However, [REDACTED] stated that the petitioner "was not extorted for money or silence, but this case [against Fernandez] involves many that were."

The regulation at 8 C.F.R. § 214.14(c)(4) provides U.S. Citizenship and Immigration Services (USCIS) with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a

Form I-918, Supplement B. Although the certifying official indicated at Parts 3.1 and 3.3 that the petitioner was the victim of an extortion attempt, the evidence in the record does not support the petitioner's victimization under CPC § 524.¹ In his January 2006 affidavit, the petitioner stated that neither [REDACTED] nor his associate threatened him. Similarly, [REDACTED], while noting that [REDACTED] had threatened others if they did not pay him, stated that the petitioner was not extorted. Accordingly, USCIS does not consider the petitioner to have been the victim of an attempted extortion.

More importantly, there is no evidence that the petitioner was a victim of [REDACTED] fraudulent schemes as claimed by the certifying official. According to the Application for Asylum (Form I-589) that the petitioner signed on January 14, 2003, the preparer is listed as [REDACTED] not [REDACTED]. Neither the certifying official nor the petitioner has presented evidence that [REDACTED] was an associate of [REDACTED] and [REDACTED] name does not appear on the Felony Complaint Warrant in the record.² Accordingly, USCIS concludes that the Form I-918 Supplement B does not establish the petitioner as a victim of [REDACTED].

Even if the petitioner were to submit evidence of the association between [REDACTED] and [REDACTED] he would remain ineligible for U nonimmigrant status. On appeal, counsel states that [REDACTED] suborned the petitioner to commit perjury by filing an asylum application on the petitioner's behalf that misrepresented the facts and the law.³

Under the California Penal Code, perjury 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.

¹ "Every person who attempts, by means of any threat . . . to extort money or other property from another is punishable[.]" West's Ann.Cal.Penal Code § 524 (2012).

² *California v. Fernandez*, Superior Court of California, County of Orange, Center Justice Center, No 03CF0760 (Mar. 23, 2006).

³ "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's Ann.Cal.Penal Code § 127 (2012).

(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.

West's Ann.Cal.Penal Code § 118 (West 2012)

██████████ or his associate may have committed perjury under C.P.C. § 118 when he completed and signed the petitioner's asylum application under penalty of perjury knowing it to contain material and false information. However, to establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must also demonstrate that ██████████ committed perjury, 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 demonstrates that the petitioner was harmed by ██████████ in that he was the victim of *notario* fraud committed by ██████████. The evidence does not demonstrate, however, that ██████████ committed perjury to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or that he committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system.

Apart from ██████████ filing of the asylum application, the relevant evidence does not indicate that any of ██████████ subsequent dealings with the petitioner involved perjury. The record shows that ██████████ filed the asylum application a few months after his first meeting with 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 ██████████ the exploitation resulted from *notario* fraud and ██████████ subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that ██████████ perjury offense was accomplished, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his 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) of the Act.⁴

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. He, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(II)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility). In these proceedings, the

⁴ Although grand theft (CPC § 427) is listed on the Form I-918 Supplement B, it is not a qualifying crime or substantially similar to any such crime enumerated at section 101(a)(15)(U)(iii) of the Act.



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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 and the petition remains denied.