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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: FEB 13 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, counsel submits a brief.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
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> (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

> 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 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." 8 C.F.R. § 214.14(a)(9).

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.
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> * * *
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> (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:
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> (A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and
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> (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:
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> (*1*) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or
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> (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 Guyana who last entered the United States on May 29, 1996 as a nonimmigrant visitor. The petitioner submitted an asylum application in March 2009, and she was placed into removal proceedings when her asylum application was referred to the New York, New York Immigration Court. The petitioner remains in proceedings before the New York Immigration Court and her next hearing date is scheduled for March 1, 2013.

The petitioner filed the instant Form I-918 U petition on July 5, 2011. On March 29, 2012, 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 she, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act.

On appeal, counsel submits a brief and asserts that the perpetrator committed perjury and procured the petitioner to commit perjury and that the petitioner's law enforcement certification (Form I-918 Supplement B) and supporting evidence indicates that the perjury is included under the charge of scheme to defraud.

Claimed Criminal Activity

As recounted in her May 2011 affidavit, according to the petitioner, in February of 2009 she hired to represent her in obtaining lawful permanent residence. told her she had to file an asylum application in order to obtain lawful permanent residence, and although the petitioner informed him that she did not fear persecution, he filled out the form and both the petitioner and signed the asylum application. After filed the application, he told the petitioner she had to pay another fee to expedite the case, and another fee to obtain a waiver for non-payment of taxes. The petitioner learned that was not legitimate, and an attorney reported him to the District Attorney, who investigated and prosecuted the case. The petitioner provided what information she had, testified before the grand jury, and was prepared to testify at trial but agreed to a plea bargain before trial.

Analysis

Upon review, we find no error in the director's decision to deny the petition. In support of her I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by of the Office of the District Attorney of New York County (certifying official). The certifying official listed at Part 3.1 the criminal acts of which the petitioner was a victim as perjury and related crimes. At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as New York Penal Law (N.Y. Penal Law) sections 190.65(1)(b) (scheme to defraud), 155.30 (grand larceny), 110/155.30(1) (attempted grand larceny), and New York Judicial Law section 478 (practicing or appearing as attorney-at-law without being admitted and registered). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official referred to an attachment in which she stated that the criminal activity involved "immigration services where immigrants are deceived into thinking that the service provider is either a lawyer or an authorized service provider." The certifying official described the facts just as the petitioner had in her May 2011 affidavit. When the District Attorney's Office learned of the

scheme, they initiated an undercover operation that resulted in the arrest of the defendant. The certifying official also noted that "[t]he filling out and filing of the I-589 under penalties of perjury is central and pivotal to the defendant's ability to perpetrate the fraud in this case. . . . [T]he perjury aspect of these [sic] case . . . was extremely important and is represented in the indictment by the Scheme to Defraud charge." Regarding any known injuries to the petitioner, the certifying official indicated that the petitioner reported being in constant fear about the lies and false misrepresentations that were made to her and that she is distrustful of everyone around her.

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. On appeal, counsel states that [redacted] committed perjury in order to further the crime for which he was eventually indicted – scheme to defraud.[1] Although the certifying official indicated at Parts 3.1 that the petitioner was the victim of perjury and that the filing of the Form I-589 under penalty of perjury was pivotal to the defendant's ability to perpetrate the fraud, the evidence in the record does not support that the crime of perjury or any similar crime was ever investigated or prosecuted. Although counsel and the certifying official noted that [redacted] may have in fact committed perjury in order to perpetuate the fraud for which he was indicted, there is no evidence in the record that shows that the crime of perjury under 18 U.S.C. § 1621 or the corresponding New York Statute was ever investigated. The certifying official did not list a statutory citation for perjury as criminal activity that was investigated or prosecuted. Although the Act encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based.

Under New York Penal Law, scheme to defraud under section 190.65(1)(b) is described as follows:

> 1. A person is guilty of a scheme to defraud in the first degree when he or she . . . (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons . . . .

N.Y. Penal Law § 190.65(1)(b) (McKinney 2013).

Under 18 U.S.C. § 1621, perjury occurs when:

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[1] Although grand larceny, attempt to commit grand larceny, and unauthorized practice of law were also listed on the Form I-918 Supplement B, they are not qualifying crimes or substantially similar to any crime enumerated at section 101(a)(15)(U)(iii) of the Act, and counsel does not contend that they are.

> (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
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> (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[.]

18 U.S.C. § 1621 (West 2013).

No elements of scheme to defraud under N.Y. Penal Law § 190.65(1)(b) are similar to perjury under 18 U.S.C. § 1621. The statute under which was prosecuted involves engaging in a course of conduct with intent to defraud or to obtain property by false pretenses, representations or promises. Perjury involves providing false testimony under oath, or willfully subscribing as true any material that the declarant does not believe to be true under penalty of perjury. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that her office or any other law enforcement authority investigated for the crime of perjury or any crime with substantially similar elements to perjury. The petitioner has not demonstrated that the criminal offense of which she was a victim, scheme to defraud, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including perjury.

Furthermore, to establish that she was the victim of the qualifying crime of perjury or obstruction of justice in these proceedings, the petitioner must demonstrate that the perpetrator committed the offense, 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).

On appeal, counsel states that by filing applications for immigration benefits with USCIS that he knew were fraudulent, committed perjury as a means to further his abuse, exploitation and control over the petitioner. Counsel asserts that the perpetrator of the criminal activity suborned the petitioner's perjury by having her sign an asylum application despite the petitioner never expressing a fear of persecution or having suffered past persecution in her native country. may have committed perjury under 18 U.S.C. § 1621(2) when he completed and signed the petitioner's asylum application under penalty of perjury knowing that the petitioner was not eligible for asylum.[2] However, the evidence does not demonstrate that committed

[2] The evidence in the record does not demonstrate that or the petitioner perjured themselves.

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 his subsequent dealings with the petitioner involved perjury. The record shows that filed the asylum application shortly 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 the initial fraud and his subsequent misleading interactions with the petitioner, not from further perjury under 18 U.S.C. § 1621. Accordingly, alleged perjury offense was not 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.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. She, 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 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

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

There is no evidence that the asylum application contains any material, false information. The petitioner noted on the application that she had not experienced harm or threats, did not fear mistreatment if she returned to her home country, etcetera. Thus, the evidence does not establish that or the petitioner perjured themselves by signing an application for an immigration benefit that contained false information.