

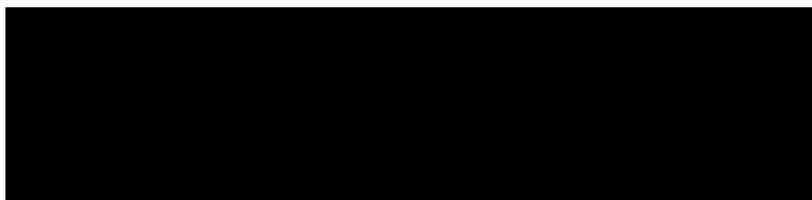
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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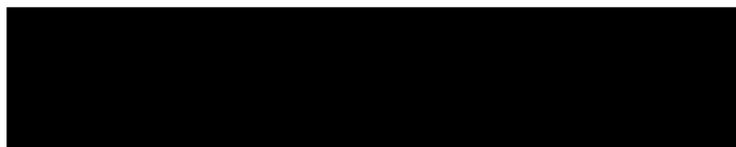
Date: SEP 14 2011 Office: VERMONT SERVICE CENTER

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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 he was a victim of qualifying criminal activity, and therefore could not show that he met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner’s representative submits a brief and a psychological evaluation of the petitioner, his wife and their children.

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);
- (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[.]

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.

* * *

(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 claims to have entered the United States in 1990 without inspection. The petitioner was placed into removal proceedings before the Los Angeles, California Immigration Court in 2002 to pursue his asylum application (Form I-589).

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on October 14, 2009. On May 6, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity

to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, the petitioner contends through his representative that he is eligible for U nonimmigrant classification because he was the victim of *notario* fraud, which is similar to the qualifying crime of perjury or solicitation to commit perjury.

The Claimed Criminal Activity

According to the petitioner, in 1993 he was working at a company whose owner brought in lawyers to fix the employees' immigration status. The petitioner stated that he and his wife started a payment plan with one of the lawyers to file the necessary paperwork to obtain legal status in the United States, but when they finished paying, they realized that the lawyer had filed an asylum application instead of an employment-based application. The petitioner recounted that he and his wife had an appointment to see the lawyer, but decided to visit the lawyer's office before their appointment, at which time they saw that the lawyer's office was empty. The petitioner maintained that he and his wife have hired other attorneys to help legalize their immigration status, but they have had no success and they "finally ended up with a deportation order."

The Petitioner is Not a Victim of Perjury or any other Qualifying Criminal Activity

In support of his I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] of the Huntington Park, California Police Department ([REDACTED]). The certifying official listed the criminal act at Part 3.1 as perjury, but did not provide a statutory citation for the criminal activity at Part 3.3. At Part 4, the certifying official indicated that the petitioner did not possess information concerning the criminal activity, that he had not been, was not being, and was not likely to be helpful in the investigation or prosecution of the criminal activity, and that he had unreasonably refused to provide assistance in the criminal investigation or prosecution. The certifying official indicated at Part 4.5 that the statute of limitation for fraud expired 14 years ago, and the petitioner has not been helpful to law enforcement authorities considering the 17-year delay in reporting the crime.

On appeal, the petitioner's representative states that fraud is a qualifying crime in this matter because the purported lawyer solicited the petitioner and his wife to commit perjury by filing an asylum application on their behalf. The petitioner's representative argues that even if the petitioner was not a victim of perjury, *notario* fraud should be recognized as a qualifying crime because it would increase the incentive for its victims to come forward to help law enforcement authorities combat it. The petitioner's representative points out that the Executive Office for Immigration Review (EOIR) considers *notario* fraud a serious offense and has dedicated funds to a fraud and abuse prevention program.

To establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the lawyer procured him to commit perjury, and if so, that he did it, 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 the lawyer suborned the petitioner to commit perjury as a way to avoid or frustrate efforts by law enforcement personnel to bring the lawyer to justice for other criminal activity, or as a means to further his abuse or exploitation over the petitioner through manipulation of the legal system. The certifying official indicates that no investigation of the lawyer's fraud against the petitioner was ever undertaken because the petitioner did not report the fraud until 17 years after its occurrence when the statute of limitations had run out. As the lawyer with whom the petitioner consulted was never investigated or charged with a crime based on the fraud he had committed against the petitioner and the record lacks evidence that the lawyer was engaged in any other criminal activity at the time, there is no basis to conclude that suborning the petitioner to commit perjury was done to avoid or frustrate any ongoing law enforcement investigation of him. The record also fails to show that the lawyer committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that the lawyer filed the petitioner's asylum application shortly after being retained by 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 lawyer, the exploitation resulted from the initial fraud, not from further perjury.

The petitioner's representative states on appeal that *notario* fraud should be included in the list of qualifying crimes enumerated at section 101(a)(15)(U)(iii) of Act. U.S. Citizenship and Immigration Services (USCIS) lacks the authority to change the statutory list of qualifying crimes at section 101(a)(15)(U)(iii) of Act; however, both the statute and the regulation at 8 C.F.R. § 214.14(a)(9) allow for "any similar activity" to be considered a qualifying crime when the nature and elements of a particular criminal offense are substantially similar to one of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Here, the petitioner has not demonstrated that the criminal offense of which he was a victim, *notario* fraud, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including perjury or solicitation to commit perjury. 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)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria

The petitioner's failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the statutory requirements for U nonimmigrant classification at subsections

101(a)(15)(U)(i)(I) – (IV) of the Act. In addition, the petitioner has not complied with section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), which requires:

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).

In this case, the certifying official indicated that the petitioner was not helpful in the investigation or prosecution of the criminal activity. Accordingly, the petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

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.

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