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U.S. Citizenship
and Immigration
Services

DIB



FILE: [REDACTED]
EAC 08 110 50406

Office: VERMONT SERVICE CENTER Date:

MAR 05 2009

IN RE: [REDACTED]

PETITION: Petition for Nonimmigrant Classification as a Victim of Qualifying Criminal Activity 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

J. Deadrick
John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa 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 because the petitioner did not establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

On appeal, counsel submits a brief and additional evidence.

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[.]

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 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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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 Attorney General, 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:

(8) *Physical or mental abuse* means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(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.

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 214.14(b), which states, in pertinent part:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states on the Form I-918 that she entered the United States on August 20, 1991. The petitioner was placed in removal proceedings before the San Francisco Immigration Court. On April 8, 2003, an immigration judge granted the petitioner voluntary departure with an alternate order of deportation to Mexico. On May 19, 2004, the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision.

On October 24, 2007, the director denied the petitioner's request for interim relief under section 101(a)(15)(U) of the Act because the offense listed on her law enforcement agency certification was not a qualifying criminal activity. The petitioner filed the instant Form I-918 on March 4, 2008. On August 13, 2008, the director issued a Request for Evidence (RFE) that the offense of which the petitioner was a victim was a qualifying crime or similar to qualifying criminal activity; and that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The petitioner, through counsel, responded to the RFE with a letter asserting that the petitioner was a victim of the qualifying crimes of witness tampering and obstruction of justice and of theft under false pretenses, an offense that was substantially similar to the qualifying crime of extortion. The petitioner also submitted additional evidence,¹ which the director found insufficient to establish her eligibility. On November 14, 2008, the director denied the petition on the grounds cited in the RFE. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that the petitioner suffered substantial mental abuse as the victim of a qualifying crime. Counsel also reasserts that the petitioner was the victim of the qualifying crimes of witness tampering or obstruction of justice and also the victim of grand theft through false pretenses, an

¹ The petitioner made two submissions after the RFE was issued. The first was received on September 16, 2008 and the second was received on October 20, 2008. In addition, counsel submitted two letters from [REDACTED] requesting expedited consideration of the petition.

offense that is substantially similar to the qualifying crime of extortion. We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial.

The Offense of Which the Petitioner was a Victim

The record shows that the petitioner testified in the prosecution of [REDACTED] who was convicted of ten counts of theft by false pretenses under section 487(a) of the California Penal Code in September 2007.² The record indicates that [REDACTED] charged aliens between \$1,000 to \$6,000 to help them obtain social security cards, employment authorization documents and lawful permanent residency, but [REDACTED] filed frivolous asylum applications for the aliens, resulting in the aliens being placed in removal proceedings. The petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification, signed by [REDACTED] with the Sonoma County, California District Attorney's Office. In response to Part 3, Question 1 of the Form I-918, Ms. [REDACTED] stated that the petitioner was a victim of criminal activity involving or similar to violations of obstruction of justice, witness tampering and grand theft/fraud by false pretense. However, in response to Part 3, Question 3, [REDACTED] stated that the statutory citation for the criminal activity that was investigated or prosecuted was section 487(a) of the California Penal Code (CPC), which states:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.

Cal. Penal Code Ann. § 487(a) (West 2009).

² Superior Court of Sonoma County, California, MCR Number [REDACTED]

Theft under California Law is Not Substantially Similar to the Qualifying Crime of Extortion

Counsel claims that theft under CPC § 487(a) is substantially similar to the qualifying crime of extortion, as defined under CPC §§ 518 and 526. California defines extortion as: “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” Cal. Penal Code Ann. § 518 (West 2009). One form of extortion is:

Use of documents resembling court order or process; intent; separate offense for each delivery

Any person, who, with intent to obtain from another person any money, article of personal property or other thing of value, delivers or causes to be delivered to the other person any paper, document or written, typed or printed form purporting to be an order or other process of a court, or designed or calculated by its writing, typing or printing, or the arrangement thereof, to cause or lead the other person to believe it to be an order or other process of a court, when in fact such paper, document or written, typed or printed form is not an order or process of a court, is guilty of a misdemeanor, and each separate delivery of any paper, document or written, typed or printed form shall constitute a separate offense.

Id. at § 526.

Counsel asserts that theft under false pretenses is similar to extortion and extortion through imitation or pretended process because “both offenses relate to conduct involving taking the property of another for gain through deception or misrepresentation.” Counsel fails, however, to acknowledge the substantial differences between these crimes. For an offense to constitute a “similar activity” to a qualifying crime under section 101(a)(15)(U)(iii) of the Act, the nature and elements of the offense must be substantially similar to the statutorily enumerated list of qualifying criminal activities. 8 C.F.R. § 214.14(a)(9). Extortion under California law requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear or under color of official right.” Cal. Penal Code Ann. § 518 (West 2009). Theft under CPC § 487(a) contains no such element. Theft also lacks a key element of extortion under section 526, namely, delivery of a document purporting to be an order or other process of a court. *Id.* at § 526. Counsel does not persuasively articulate how Mr. [REDACTED] theft of the petitioner’s money for an employment authorization document and promise of lawful permanent residency is substantially similar to delivery of a document purporting to be an order or other process of a court. In fact, the petitioner attests that after she was placed in removal proceedings, [REDACTED] referred her to an attorney, whom she paid to represent her in those proceedings. The petitioner does not indicate that [REDACTED] delivered the notice to appear for removal proceedings to the petitioner or that he intended to obtain any money or other thing of value from the petitioner as a result of the Immigration Court notice.

Theft under CPC § 487(a) is not similar to the qualifying offense of extortion, as defined at CPC §§

518 and 526 because the elements of these offenses are not substantially similar. Counsel does not claim that theft under CPC § 487(a) is similar to any of the other criminal activities listed at section 101(a)(15)(U)(iii) of the Act.

Witness Tampering and Obstruction of Justice

To qualify for U nonimmigrant classification, an alien must demonstrate that she or he has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based. Section 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III); 8 C.F.R. § 214.14(b)(3). The petitioner must also submit a certification from a law enforcement agency 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).” Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2)(i). In this case, there is no evidence that the certifying agency made any investigation or prosecution of witness tampering and obstruction of justice.

Counsel claims that the petitioner was the victim of the qualifying crimes of witness tampering and obstruction of justice because [REDACTED] twice visited the petitioner at her home to try and convince her not to testify against him. However, the record contains no evidence that the certifying agency ever investigated or prosecuted [REDACTED] for witness tampering or obstruction of justice based on his visits to the petitioner’s home. In response to Part 3, Question 1 of the Form I-918 certification, [REDACTED] stated that the petitioner was a victim of criminal activity involving or similar to violations of obstruction of justice, witness tampering and grand theft/fraud by false pretense. However, in response to Part 3, Question 3, [REDACTED] stated that the statutory citation for the criminal activity that was actually investigated or prosecuted was theft under CPC § 487(a). The letters from [REDACTED] and [REDACTED] confirm that the petitioner testified against [REDACTED], but they do not discuss the crime or crimes which were investigated or prosecuted. In her September 21, 2007 letter, [REDACTED] states that [REDACTED] was convicted of ten counts of theft by false pretenses, which included the petitioner as a named victim. [REDACTED] does not, however, state that the Sonoma County District Attorney’s Office ever investigated or prosecuted [REDACTED] for witness tampering or obstruction of justice.

On appeal, counsel claims that the petitioner was the victim of obstruction of justice or witness tampering, which remain qualifying crimes even though [REDACTED] was not prosecuted for those offenses. Counsel asserts that the District Attorney’s Office did not prosecute [REDACTED] for obstruction of justice or witness tampering because they were not aware of the offenses until the petitioner testified and “it was not feasible to charge [REDACTED] with the crime[s] because it was necessary to have a preliminary hearing first.” The record does not support counsel’s claim.

In her January 7, 2008 declaration, the petitioner stated:

After the trial of [REDACTED] case started, he went to our house and urged me not to testify against him. I refused his demand and told him that the truth needed to be told. He victimized countless of innocent immigrants, defrauding them of their hard-earned money and placing them in removal proceedings. I also felt that it was my obligation to help put an end to [REDACTED] illegal activities.

The petitioner only mentioned one occasion on which [REDACTED] went to her home. The petitioner did not indicate that [REDACTED] threatened or intimidated her during his visit. However, in her October 17, 2008 declaration, the petitioner stated:

[REDACTED] & his mother came to our home and beseeched my mother to make me not testify. This caused a lot of consternation for my family and me. We felt vulnerable because we were aware that [he] knew where we lived. . . .

Then [REDACTED] came to our home a second time. This time he spoke to my husband . . . and myself. He tried to persuade us or intimidate us from testifying. It was extremely scary and stressful having him come to our home and practically threaten us if we testified. He also tried to bribe us by telling us he had a lot of money and he would pay for all our attorney bills and he would be able to save us from being deported. Since he lied to us in the first place, we did not trust him. Finally, after much arguing he left very upset. My entire family was worried & upset about these events. We did not know if he would come back.

The petitioner further explains that she and her husband went to a police station and spoke to someone on the telephone about the incident, but she does not know if a police report was ever filed. The petitioner reports that she and her husband then went to the District Attorney's office and spoke to the Spanish interpreter, who the petitioner thought would tell the attorneys. The petitioner states that she also spoke to an Immigration and Customs Enforcement (ICE) employee about getting a restraining order against [REDACTED], but the ICE employee told her it was not necessary because the law prohibited [REDACTED] from approaching any witnesses in his case. The petitioner does not explain why she failed to mention both of [REDACTED]'s visits and her ensuing actions in her first declaration.

The court transcripts do not support the petitioner's testimony. Page 22 of the court transcript for the petitioner's testimony against [REDACTED] on August 28 and 30, 2007 shows that the petitioner stated that sometime after she first testified against him, [REDACTED] visited her home with his mother and [REDACTED] "said that we should help each other mutually. Because we were on the same scale. I told him that everything was over for me. I was going to be deported. . . . Oh, no, don't you worry. I have some lawyers in San Francisco and they can help you. But I didn't believe in him anymore." The petitioner did not indicate that [REDACTED] threatened or intimidated her and she also mentioned only one visit that [REDACTED] made to her home.

In her October 17, 2008 declaration, the petitioner explains that when she testified, the district attorney asked if [REDACTED] had ever been to her home and she spoke about when he first came with his mother. The petitioner states that the district attorney, “did not ask any more questions about the incidents. [She] does not speak Spanish.” In her October 17, 2008 declaration, counsel states that on October 16, 2008, she asked the district attorney, [REDACTED], “why the D.A.’s office did not prosecute or at least charge [REDACTED] with witness tampering or obstruction of justice. Ms. [REDACTED] said that she had not known about [REDACTED] visiting the home of [the petitioner] and her family until the day she testified about it.” Counsel submits no statement from [REDACTED] to support her assertions.

Even if [REDACTED] committed witness tampering and obstruction of justice, the record contains no evidence that the Sonoma County District Attorney’s Office, the certifying agency in this case, ever investigated or prosecuted [REDACTED] for those crimes. We recognize, as counsel notes, that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). In this case, the record shows that the certifying agency did not investigate [REDACTED] for witness tampering or obstruction of justice. Contrary to counsel’s assertion, the Form I-918 Supplement B certification states that the only criminal activity investigated or prosecuted was theft under CPC § 487(a). The relevant evidence also contains no indication that the certifying agency intends to investigate or prosecute [REDACTED] for obstruction of justice or witness tampering in the future.

Substantial Physical or Mental Abuse as a Result of Qualifying Victimization

The petitioner has also failed to demonstrate that she suffered substantial physical or mental abuse as a result of [REDACTED] offense. In her first declaration, the petitioner stated that [REDACTED] told her and her husband that they could legalize their status in the United States under his “ten-year plan.” The petitioner reported that she and her husband gave [REDACTED] a total of \$5,500, but instead of filing for lawful permanent residency, he filed asylum applications on their behalf and the petitioner and her husband were subsequently placed in removal proceedings. The petitioner stated that she and her husband retained a lawyer recommended by [REDACTED] to represent them in immigration court and later hired a second attorney to represent them before the U.S. Court of Appeals for the Ninth Circuit, but the court dismissed their petition for review and their attorney forgot to request a stay of their voluntary departure period.

The petitioner explained that she spent many sleepless nights crying and worrying after she and her husband were placed in removal proceedings. She stated that their dreams of legalizing their status in the United States have collapsed and their children are also very sad and frightened. The petitioner also stated that although [REDACTED] was imprisoned, she and her husband were still afraid that if he was released, he would harm them. In her second declaration, the petitioner states that it was scary and stressful when [REDACTED] went to their home to try and persuade them not to testify against him.

The petitioner relates that it was “extremely nerve racking” to testify against [REDACTED] and she did not know if he would be able to harm her and her family. The petitioner did not indicate, however, that [REDACTED] ever actually threatened her or her family, or that he or any of his associates ever approached them after they testified.

Apart from her monetary loss, worry, sadness and disappointment regarding possible deportation and [REDACTED]'s potential harm to her family, the petitioner does not indicate that she suffered any physical or mental injury, or emotional or psychological impairment, as a result of [REDACTED]'s crime. The psychological report of [REDACTED] is also not sufficient to establish the requisite abuse. Dr. [REDACTED] evaluated the petitioner at the request of counsel nearly six years after the petitioner was placed in removal proceedings. Dr. [REDACTED] diagnoses the petitioner with depression and post traumatic stress disorder and recommends that the petitioner be evaluated for psychotropic medication and begin psychotherapy. Dr. [REDACTED]'s recommendations indicate that the petitioner had never previously sought or received such treatment in any of the preceding six years after she was placed in removal proceedings, although [REDACTED] describes the fear of deportation as the petitioner's primary stressor. Dr. [REDACTED] does not state that the petitioner had any pre-existing mental health conditions.

While we do not discount the serious consequences of removal from the United States, in this case, the petitioner has not demonstrated that [REDACTED]'s offense caused her to suffer substantial physical or mental abuse. The court transcript states that [REDACTED] was ordered to pay \$1,700 in restitution to the petitioner, although she claimed that she and her husband paid him a total of \$5,500 and the court ordered substantially more restitution to other victims. In addition to the unclear magnitude of the petitioner's monetary loss, she also has not testified to any physical or mental injury resulting from Mr. [REDACTED]'s actions, apart from periods of insomnia, worry and crying. Although [REDACTED] diagnoses the petitioner with mental illnesses, her evaluation was made at the request of counsel in response to the RFE nearly six years after the petitioner was placed in removal proceedings. Apart from [REDACTED] report, the record contains no evidence that the petitioner suffered or received treatment for any substantial physical or mental injury or harm, or emotional or psychological impairment resulting from [REDACTED] offense.

Under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence fails to establish that the petitioner suffered the requisite, substantial physical or mental abuse.

Conclusion

Although the petitioner helped the Sonoma County District Attorney's Office in their prosecution of [REDACTED] for theft under CPC § 487(a), that offense is not a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has also not demonstrated that [REDACTED] was investigated or prosecuted for any other qualifying crime or similar activity, as described in section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has: 1) not established that [REDACTED] was a victim of qualifying criminal activity, as required by

section 101(a)(15)(U)(i)(I) of the Act; 2) not demonstrated that she suffered substantial physical or mental abuse as a result of having been such a victim, as required by section 101(a)(15)(U)(i)(I) of the Act; 3) not established that she was, is or is likely to be helpful to a law enforcement authority investigating or prosecuting qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III); and 4) failed to submit certification from a law enforcement authority that she was, is or is likely to be helpful in the investigation or prosecution of qualifying criminal activity, as required by section 214(p)(1) of the Act. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.