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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A14



FILE:



Office: VERMONT SERVICE CENTER Date: **DEC 17 2010**

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.

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 had been the victim of a qualifying crime or criminal activity; that she had suffered substantial physical or mental abuse based on the qualifying criminal activity; and, that consequently she could not establish any of the statutory eligibility requirements which all include that the crime is a qualifying crime or criminal activity. On appeal, the petitioner submits an additional statement and a copy of an undated letter to the Senators and the Congresswoman representing South Dakota.

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[.]

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 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 [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:

(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.

Facts and Procedural History

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of South Africa. She entered the United States as a B-1/B-2 visitor on February 7, 2001. The petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification and on January 19, 2007, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action valid to January 18, 2008. The interim relief was extended twice from February 8, 2008 to February 7, 2009 and again on January 26, 2009 to January 25, 2010. The petitioner filed a Form I-918, Petition for Nonimmigrant U Status, on October 18, 2007 along with a U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by [REDACTED] U.S. Immigration and Customs Enforcement (USICE) Senior Special Agent, Kansas City, Missouri, and dated August 10, 2006.¹ [REDACTED] identified the criminal activity investigated as violations of: 8 U.S.C. § 1324; 18 U.S.C. § 371; 18 U.S.C. § 1001; 18 U.S.C. § 1028; 18 U.S.C. § 1342; 18 U.S.C. § 1343; 18 U.S.C. § 1546; and 18 U.S.C. § 162, as well as conspiracy to commit these acts.

The director issued a request for further evidence (RFE) on August 24, 2009. Counsel for the petitioner

¹ The record also includes a Form I-918 Supplement B, dated May 3, 2006, signed by [REDACTED] who certified that the criminal activity involved in the investigation may involve, but is not limited to, a violation of 8 U.S.C. § 1324 and that the petitioner and her husband had been helpful in identifying businesses who utilized the services of [REDACTED] company as well as the names of victims of the fraudulent criminal schemes.

responded to the RFE on or about October 5, 2009 and included a Form I-918 Supplement B, dated September 28, 2009, signed by [REDACTED]. The Form I-918 Supplement B at Part 3, Item 1 identifies the criminal activity as attempt to commit any of the named crimes, conspiracy to commit any of the named crimes, obstruction of justice, perjury, solicitation to commit any of the named crimes, trafficking, and unlawful criminal restraint. The Form I-918 Supplement B at Part 3, Item 3 identifies the statutory citation(s) for the criminal activity being investigated or prosecuted as 8 U.S.C. § 1324; 18 U.S.C. § 1546; and 18 U.S.C. § 1621. The director found the petitioner's response insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. Counsel for the petitioner submitted a motion to reopen and reconsider the decision. The director reopened the matter and upon review issued a second decision denying the petition on March 8, 2010. The petitioner timely appealed.

The record includes the petitioner's April 20, 2005 letter written to a United States Senator, in which the petitioner indicated that her husband obtained a job with South Dakota [REDACTED] through [REDACTED] who used the services of [REDACTED] owned by [REDACTED]. The petitioner noted that shortly after her husband started work for [REDACTED] he was laid off because [REDACTED] had been put in jail for visa fraud and [REDACTED] had never received the official work authorization that [REDACTED] had claimed was in place. The petitioner indicated that none of the paperwork that supposedly had been processed by [REDACTED] had ever been submitted.

In a May 23, 2006 affidavit signed by both the petitioner and her husband, the petitioner provided more detail regarding her relationship with [REDACTED] and [REDACTED]. She indicated that she responded to an advertisement placed in a South African agricultural magazine to obtain information regarding immigrating to the United States. The petitioner stated that she spoke directly with [REDACTED] the owner of [REDACTED] based in Salina, Kansas, and he explained that his company brought South Africans to the United States to work with various agricultural companies. The petitioner noted that [REDACTED] represented that he had a contract with [REDACTED] to fill hundreds of positions throughout the United States. The petitioner indicated that [REDACTED] guaranteed the petitioner and her husband jobs upon their arrival in the United States. [REDACTED] explained to the petitioner that in order to work legally in the United States, she and her husband should create a limited liability company (LLC) so that they could work as independent contractors. The petitioner stated that [REDACTED] further explained that an LLC was a way for the couple to begin work immediately upon arrival in the United States and that there was no risk involved with creating an LLC and this was how the system worked in the United States. The petitioner indicated that they paid various fees for the LLC and for the labor certification, that they supplied her husband's resume so that job interviews could be set up, and that they unexpectedly received the LLC documents from the United States via facsimile, even though [REDACTED] had told them they could not apply to establish the LLC until in the United States.

The petitioner indicated that she and her husband also applied for visitors' visas upon the advice of [REDACTED] and traveled to the United States in February 2001. The petitioner declared that upon arrival they spent the first week in Orlando, Florida at a relative's timeshare and then traveled to Kansas City, Missouri where she thought they would stay until placed in a suitable job. However, the petitioner and

her husband learned that they would have to travel to Salina, Kansas. The petitioner indicated that they rented a car and traveled the next day to Bennington, Kansas where [REDACTED] was located and on the following day met with [REDACTED] and discussed various options and job opportunities. The petitioner noted that they had been told that job interviews had been lined up for them prior to their entry into the United States and so were very frustrated when [REDACTED] indicated that because of the bad weather they would have to wait a week before being taken to the interviews. The petitioner noted that after several days [REDACTED] picked them up and took them to his office where he discussed different ways the petitioner and her husband could obtain work visas, including working through the LLC that the petitioner and her husband had established with the assistance of [REDACTED]. The petitioner indicated that [REDACTED] was attempting to obtain H-2A work visas through [REDACTED] in Kansas; however, the H-2A visas were not forthcoming. The petitioner noted that she and her husband drove to Minneapolis to stay with friends while waiting for [REDACTED] to hire her husband. The petitioner indicated that eventually her husband was hired by [REDACTED] a company in South Dakota, through [REDACTED]. The petitioner noted that [REDACTED] finally allowed her husband to start work without the H-2A visa because they had been assured that he could work through the LLC.

The petitioner reported that her husband was laid off shortly after starting work with [REDACTED] and she was told that [REDACTED] had been arrested by the legacy Immigration and Naturalization Service (INS) and jailed for visa fraud. The petitioner indicated that she and her husband learned that they had not obtained any work visas, either an H-2A or an H-1B (a visa [REDACTED] told her and her husband they could obtain because they had a labor certification application on file) when [REDACTED] was arrested and incarcerated.² The petitioner noted that she was contacted by [REDACTED] an officer of legacy INS, and that she provided a statement regarding her interactions with [REDACTED] and copies of documentation between the petitioner and her husband and [REDACTED]. The petitioner indicated that she and other South African individuals were paroled into the United States and offered work authorization for cooperating with the U.S. government. The petitioner indicated that South Dakota [REDACTED] filed a Form I-140, Immigrant Petition for Alien Worker, and permanent labor certification on behalf of her husband in 2001.

In the same statement attached to the petitioner's request for interim relief, the petitioner noted that USICE continued its investigation of [REDACTED] and his company after his 2002 conviction, and that by 2004, USICE had sufficient evidence to indict [REDACTED]. In 2005, an indictment was filed accusing [REDACTED] of devising a scheme to defraud the U.S. government by submitting falsified immigration documents for the purpose of obtaining certifications and approvals from the U.S. Department of Labor and USCIS. The indictment included charges of filing petitions with the Department of Labor for employers without their consent, as well as forging employers' signatures, and

² The record shows that [REDACTED] was charged in 2001 for conspiracy to defraud the United States and pled guilty to a charge of misuse of a visa in 2002.

falsifying job descriptions. The petitioner noted that the case never went to trial because [REDACTED] pled guilty to six counts of placing South African clients in jobs in the United States that they were not authorized to hold under the conditions of their H-2A temporary work visas.

In [REDACTED] statement describing the criminal activity being investigated that was attached to the August 10, 2006 Form I-918 Supplement B, [REDACTED] stated that the 2004 investigation centered on [REDACTED] perjury violations (18 U.S.C. § 1621) and violations of immigration law (8 U.S.C. § 1324). [REDACTED] noted that as the investigation grew, the petitioner and her husband were valuable sources of information and that they were able to provide names and contact information of individuals who had been victimized by the criminal organization. According to [REDACTED] statement, the petitioner, although helpful in the 2004/2005 investigation and indictments, was not a victim of [REDACTED] perjury as detected and investigated but was a witness to the victimization of others. The investigation of [REDACTED] perjury, according to [REDACTED] involved [REDACTED] submission of falsified immigration documents for the purpose of obtaining certifications and approvals from the U.S. Department of Labor and USCIS. The individuals harmed by [REDACTED] perjury were the victims on whose behalf the falsified papers were filed.

On August 24, 2009, the director issued a request for evidence (RFE) and noted that the certifying agency had listed sections of law that appeared to relate to alien smuggling and not trafficking. The director noted that violations of: (1) 8 U.S.C. § 1324 related to bringing in and harboring aliens; (2) 18 U.S.C. § 371 related to conspiracy to commit offenses or to defraud the United States; (3) 18 U.S.C. § 1001 related to statement or entries generally; (4) 18 U.S.C. § 1028 related to fraud and related activity in connection with identification documents, authentication features, and information; (5) 18 U.S.C. § 1342 related to fictitious name or address; (6) 18 U.S.C. § 1343 related to fraud by wire, radio, or television; and, (7) 18 U.S.C. § 1546 related to fraud and misuse of visas, permits, and other documents. The director requested additional evidence to demonstrate that any of these crimes would be considered a crime related to those crimes enumerated in section 101(a)(15)(U)(iii) of the Act. The director noted that the certifying agency had listed a violation of 18 U.S.C. § 1621 which is perjury, a qualifying crime listed in section 101(a)(15)(U)(iii) of the Act on the Form I-918 Supplement B. The director requested that the petitioner provide evidence establishing that she was a victim of the criminal act of perjury and that she had suffered substantial physical and/or mental abuse.

In response, counsel for the petitioner submitted a Form I-918 Supplement B, signed by [REDACTED] on September 28, 2009. As noted above, the Form I-918 Supplement B at Part 3, Item 1 identified the criminal activity as attempt to commit any of the named crimes, conspiracy to commit any of the named crimes, obstruction of justice, perjury, solicitation to commit any of the named crimes, trafficking, and unlawful criminal restraint. The Form I-918 Supplement B at Part 3, Item 3 identified the statutory citation(s) for the criminal activity being investigated or prosecuted as 8 U.S.C. § 1324; 18 U.S.C. § 1546; and 18 U.S.C. § 1621. In [REDACTED] attached statement, [REDACTED] noted that the initial investigation in 2001 involved an investigation of a smuggling organization operated by [REDACTED] and that the petitioner and her husband provided great detail regarding the smuggling scheme. [REDACTED] indicated: that [REDACTED] placed advertisements in South African newspapers claiming that his

company could find employment for South Africans in the United States; that individuals who responded to the advertisements were convinced to apply for B-2 visitor visas and that once in the United States would be placed in agricultural jobs; and that [REDACTED] charged exorbitant sums to process the visitor visas and more fees to find them jobs once the individuals were in the United States.

For the first time, [REDACTED] added: that the petitioner and her husband detailed how they believed that they were not free to leave the motel in which they were housed because they feared retaliation by [REDACTED] and that “[the petitioner and her husband] were victims of this criminal activity which centered around violations of 18 USC 1546, 18 USC 1028, 8 USC 1324, 18 USC 1621.” [REDACTED] stated further that upon legacy INS’s initial contact with the more than 40 South Africans at the various motels in and around Salina, Kansas, the South Africans informed legacy INS agents that although [REDACTED] told them they were free to leave the hotel, if they chose to seek employment without his assistance, he would summon the authorities.” [REDACTED] concluded that [REDACTED] maintained control over the individuals by intimidating them to remain where they were and be silent or risk being turned over to U.S. authorities. [REDACTED] opined that in effect [REDACTED] coerced labor and services from South African nationals he brought into the country which is a clear violation of 18 U.S.C. § 1589. [REDACTED] stated: “[a]lthough the initial investigation focused on smuggling as articulated in 8 USC 1324, and several other criminal statutes such as; 18 USC 1546, 1028, and 1621, we also explored and investigated the possibility of charging [REDACTED] with for [sic] trafficking in persons, obstruction of justice, and involuntary servitude because many of the individuals [REDACTED] trafficked into the U.S. were coerced and intimidated into compulsory menial positions against their will and under threat.” [REDACTED] noted that subsequent to [REDACTED] guilty plea for violating 18 U.S.C. § 1546, (in 2002) [REDACTED] was ordered removed from the United States but remained in the United States while appealing that decision to the Board of Immigration Appeals.

[REDACTED] indicated: that following his order of removal in 2002, [REDACTED] changed his modus operandi; that he was alerted to the change by the petitioner; and that in 2004 a second investigation was initiated on the original targets of the 2001 investigation; and that the petitioner and her husband were crucial in getting witnesses and potential victims to speak with USICE and provide testimony against the criminal organization.

In a supplemental statement, dated September 22, 2009, the petitioner indicated: that upon arriving in the United States she and her husband were moved from hotel to hotel by [REDACTED] who promised to find them jobs; that [REDACTED] kept asking for more money from them; that he was evasive and threatening when they asked about their jobs; and that when [REDACTED] was arrested they came to understand that Botes’ enterprise was an elaborate illegal scam and that he had trafficked them into the United States.

On motion, counsel for the petitioner submits a second Form I-918 Supplement B, signed by [REDACTED] and dated January 28, 2010. In a signed attachment, [REDACTED] provided the same information as in his September 28, 2009 statement and added a clarification regarding the enumerated offense of perjury – 18 U.S.C. § 1621. [REDACTED] declared that [REDACTED] was investigated for

perjury in both criminal cases as the perjury related to statements made to the Department of Labor, the legacy INS, and the Department of State. ██████████ stated further: that “[i]n his applications, ██████████ repeatedly falsified documents in order [to] conceal the true nature of his criminal enterprise.”

Counsel also submits a January 26, 2010 clarifying statement from the petitioner. The petitioner stated: that she and her husband were “trafficked into the country by ██████████ on the promise that [her husband] would have an agricultural job in the U.S.”; that upon arrival at a Kansas airport with no one to meet them, they tried to rent a car but could not so a Marine offered them a ride to Salina; that once in a motel in Bennington, ██████████ demanded more money to process H-2A visas; that ██████████ kept telling the petitioner and her husband to be patient but because they had signed a contract with him, they could not seek employment elsewhere without his assistance; and that if they left the motel, he would report them to U.S. authorities for being in the country illegally. The petitioner stated that if she left information out of her original statement, it was because she was helping USICE at the time and things were muddled in her mind. The petitioner indicated that she and her husband snuck away from the motel, walked to a car dealership, purchased a car, and drove to Minneapolis while ██████████ was in Nebraska. The petitioner reported that ██████████ was furious with the couple for leaving and threatened her husband that he would never find work in this country. The petitioner noted that although her husband eventually obtained a job with ██████████ as they were associated with ██████████ he was laid off from that job. The petitioner indicated that during ██████████ trial (in conjunction with the 2001 investigation) he learned that she and her husband had provided testimony to USICE and made threats against them in Internet postings.

On appeal, the petitioner submits an undated letter written to the Senators and a Congresswoman of South Dakota. In the letter, the petitioner states: “this man [referring to ██████████] is not aware of my involvement as officers I worked with wanted to protect us at all cost since perpetrator is a dangerous man investigated by truth and reconciliation committee in South Africa for his part in killing innocent people.” In the petitioner’s statement in support of the appeal, the petitioner reports: that ██████████ made false statements to foreigners that he could represent them with U.S. immigration officials in securing work visas; that he falsely represented that if the individuals obtained B-2 visitor visas and entered the United States they could work legally through an established LLC; and that ██████████ continued to make false statements regarding the individuals’ immigration status once they arrived in the United States.

The Offense of Which the Petitioner was a Victim

Preliminarily, the AAO will address the qualifying crimes of trafficking in persons, obstruction of justice, and involuntary servitude mentioned in ██████████ statement attached to the September 28, 2009, Form I-918 Supplement B. The AAO notes that ██████████ indicated that “many of the individuals ██████████ trafficked into the U.S. were coerced and intimidated into compulsory menial positions against their will and under threat.” However, ██████████ does not identify the petitioner as one of those individuals. Upon review of the petitioner’s statements, including her clarifying statement on appeal, the record does not support a conclusion that the petitioner was the victim of

trafficking, as she voluntarily applied for a B-2 visa and entered the United States using that visa. The petitioner does not provide consistent probative testimony indicating that [REDACTED] coerced labor and services from her or required her to work in a menial position against her will and under threat. Rather, her statements indicate that she and her husband were frustrated that they did not have the proper documentation to work when they arrived in the United States; that after her husband was interviewed by a representative of [REDACTED] the petitioner and her husband traveled to Minneapolis to wait for the documentation promised; and that eventually her husband was employed by [REDACTED], a company that was convinced that the petitioner's husband's employment through his LLC was legal. The petitioner's explanation in her January 26, 2010 statement that her thoughts were muddled when she submitted her earlier statements because she was assisting USICE at the time and there was so much going on that she may have left something out, is insufficient. The petitioner's statements, which include references to her and her husband moving about the country, buying a car and a house, and her husband obtaining work through the use of their established LLC, all belie the petitioner's later indication that she and her husband were held against their will and under threat. There is nothing in the record that demonstrates that either the petitioner or her husband was compelled to work. Rather, the petitioner and her husband reveal their frustration that they did not have jobs when they arrived in the United States as promised. Similarly, the record includes no testimony or evidence that the petitioner was the victim of the perpetrator's obstruction of justice. The record is insufficient in this regard.

The record does include clarifying information regarding the investigation of [REDACTED] possible perjury at the initial investigation in 2001 wherein the petitioner was a possible victim. Title 18 § 1621 of the United States Code provides a definition of the crime of perjury in pertinent part is:

Whoever—

- (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
 - (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;
- is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

The AAO observes that the representations made to the petitioner and her husband by [REDACTED] even if false representations, do not constitute perjury unless there is evidence that [REDACTED] made those representations under oath as described above.

The certifying agency in the Form I-918 Supplement B, dated September 28, 2009 identified the statutory citation(s) for the criminal activity being investigated or prosecuted as 8 U.S.C. § 1324; 18 U.S.C. § 1546; and 18 U.S.C. § 1621. Violations of 8 U.S.C. § 1324 which relates to bringing in and harboring aliens, and 18 U.S.C. § 1546, which relates to fraud and misuse of visas, permits, and other documents, are not qualifying crimes. The record does not include evidence that the elements of these crimes are substantially similar to those crimes listed at section 101(a)(15)(U)(iii) of the Act. However, perjury is listed as a qualifying crime under section 101(a)(15)(U)(iii) of the Act. As perjury is not a criminal act against a person, an individual claiming to be a victim of perjury pursuant to 8 C.F.R. § 214.14(a)(14)(ii), must show that he or she was harmed by the perjury that was being investigated or was prosecuted.

In this matter, according to [REDACTED] clarifying statement, dated January 28, 2010, the certifying agency investigated the crime of perjury in 2001. The 2001 investigation is the investigation that relates to the petitioner and her claimed victimization. [REDACTED] noted the 2001 legacy INS investigation involved [REDACTED] statements made to the Department of Labor, legacy INS, and the Department of State and that “[i]n his applications, [REDACTED] repeatedly falsified documents in order [to] conceal the true nature of his criminal enterprise.” Although the petitioner in this matter stated that both she and her husband were guaranteed jobs by [REDACTED] there is no evidence in the record that supports a claim that [REDACTED] the perpetrator of the alleged perjury being investigated, falsified a labor certification application, a document that is signed under oath on behalf of the petitioner. The petitioner fails to demonstrate that [REDACTED] ever attempted to obtain work authorization on her behalf or that [REDACTED] made false statements under oath to the Department of Labor, legacy INS, and the Department of State on her behalf. To the contrary, the petitioner in her April 20, 2005 letter indicated that [REDACTED] never submitted the paperwork he had promised to submit on their behalf. Moreover, the regulation at 8 C.F.R. § 214.14(a)(14)(ii) requires that the petitioner establish both that she has been directly and proximately harmed by the perpetrator of the perjury *and* that there are reasonable grounds to conclude that the perpetrator committed the perjury offense as a means to either avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity or to further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. The petitioner in this matter may have suffered direct economic harm attributable to [REDACTED] who took her and her husband’s money without providing the service promised; however, she has not provided reasonable grounds to conclude that [REDACTED] falsified labor certification documents under oath to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity. Similarly, the petitioner has not provided reasonable grounds to conclude that [REDACTED] falsified labor certification documents under oath to further his abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. The record simply does not include such evidence. In this matter, [REDACTED] gave the petitioner and her husband advice on how to work in the United States and took their money and failed to process the necessary paperwork so that they could legally work in the United States. The record does not support a claim that the petitioner was directly harmed by a perjurer who was being investigated *and* also that the individual whose perjury was being investigated, perjured himself to further his abuse or exploitation of or undue control over the petitioner through the manipulation of the

legal system. The record is simply insufficient in this regard.

Substantial Physical or Mental Abuse

As the petitioner has not established that she was the victim of a qualifying crime or criminal activity, she cannot establish that she has suffered substantial physical or mental abuse. We note, however, that even if the evidence did support the petitioner's victimization as a result of a qualifying crime or criminal activity, the record would not support a finding that she suffered physical or mental abuse as that term is defined at 8 C.F.R. § 214.14(a)(8).

The petitioner in this matter provided an April 29, 2006 evaluation prepared by [REDACTED] M.S., Ph.D who observed: that the petitioner and her husband had been going through stressful or traumatizing events related to their lack of work authorization beginning in 2001; that the petitioner and her husband were given authorization to live in the United States while they assisted the U.S. government; and that the petitioner and her husband's ordeal had been a traumatic experience and still remained unresolved. In an October 2, 2006 follow-up letter, [REDACTED] further observed that the couple, after learning that they had no valid legal status in the United States, both experienced substantial anxiety, stress, and fear. [REDACTED] noted: that the petitioner was afraid to return to South Africa, as the perpetrator of the criminal activity in this matter had been deported there, and she feared she would be killed by him if she returned to South Africa; that the petitioner felt extreme guilt and sorrow because she could not return to South Africa for her mother's illness or funeral because she knew that she would be unable to return to the United States; and that the couple's despair was further exacerbated when they learned that their U visa application had been denied. [REDACTED] indicated that given the substantial emotional suffering the couple are enduring due to the crime committed against them, he diagnosed the couple with adjustment disorder which manifests itself in the petitioner through episodes of constant crying, feelings of guilt and sadness, loss of concentration, loss of appetite, and loss of interest in any activity. In a January 26, 2010 follow-up to his two prior letters, [REDACTED] indicates that the petitioner reported that the perpetrator, [REDACTED] had lied under oath about his role in bringing the couple and others to the United States. [REDACTED] indicated that the petitioner became fixated on ensuring that the truth came out and that the person who had caused her and her husband so much despair was not allowed to twist the facts. [REDACTED] observed that the petitioner in particular became emotionally distraught resulting in loss of or gain of weight, lack of concentration, and sleeplessness, and that it was obvious to him that the perpetrator's behavior had caused the petitioner significant anxiety and fear. [REDACTED] noted that the symptoms displayed and described by the petitioner could lead to severe multiple health problems such as headaches and digestive disorders if not properly treated.

The record also includes an April 25, 2006 letter written by the petitioner's personal physician, [REDACTED] who observed that the couple, to this point, had not needed medication to treat the emotional issues that they had endured. In a January 26, 2010 letter, [REDACTED] noted that during the years that the couple had been going through their legal dilemma he has found the couple to be remarkably strong and caring and although he has not diagnosed them with a specific psychiatric

illness, there is no doubt that the risk to their lives has caused them stress and affected them emotionally. ██████ observed that in early 2007, the petitioner's stress manifested itself physically in the petitioner when she had significant pain from dyspepsia, prompting a medical procedure with biopsies which showed chronic gastritis, an inflammation or erosion of the lining of the stomach. ██████ found it apparent that the chronic gastritis was exacerbated by the stress of what the couple was going through on an emotional level. ██████ noted that the petitioner had been treated and had improved but that she continued to have periodic symptoms which are directly related to the couple's legal situation.

The record also includes the petitioner's statements regarding her psychological and emotional state since 2001. In the petitioner's April 20, 2005 letter to Congress, the petitioner does not describe either mental or physical abuse. In her initial May 23, 2006 statement in support of interim "U" nonimmigrant relief, the petitioner noted the difficulty she and her husband experienced once their parole status and work authorizations were not extended. The petitioner indicated: that she and her husband had sought counseling; that the "uncertainty of [their] lives is very unsettling and putting a lot of stress on [their] marriage;" and that "the entire ordeal has placed both of [them] under a great mental strain and anxiety." In the petitioner's September 22, 2009 statement, she noted: that they lived in extreme fear and uncertainty; that "during this entire time [they] have not known if [they] would be deported or have to leave the country;" and that this has caused extreme stress. The petitioner indicated that every time she thought of going back to South Africa she would cry uncontrollably. The petitioner stated further: that "since applying for the U visa the insecurity in [their] lives had caused [her] to lose and gain excessive weight;" that "[w]hile waiting for interim approval of the U visa, [she] couldn't sleep at night;" and that as a result she was tired, irritable, and mentally unstable. The petitioner noted that she again fears that the application will not be approved and her symptoms have returned and she had been diagnosed with adjustment disorder. The petitioner also noted her fear of returning to South Africa because ██████ had been deported to South Africa and she believed he had threatened her life.

In the petitioner's January 26, 2010 statement, the petitioner reiterated her fear of ██████ referencing comments he had made in Internet postings that were threatening in nature and noted that she had become paranoid as a result of her fear. The petitioner again referenced her diagnosis of adjustment disorder and also noted her stomach pains that her physician had diagnosed as being emotionally related. The petitioner further referenced ██████ and ██████ clarifying letters and asserted that these letters confirmed that she had suffered substantial physical and mental abuse based on the qualifying criminal activity of perjury.

On appeal, the petitioner asserts that common sense supports that to be held in embarrassment and near servitude for weeks while waiting for signs of the promises made and to be continually summoned for additional funds by the perpetrator, is substantial physical and mental abuse. The petitioner also references the threat of death by the perpetrator upon her return to South Africa. The petitioner contends that these circumstances constitute physical and mental abuse and that the abuse all stems from the perpetrator's perjury.

Physical or mental abuse is abuse to the person and does not extend to financial loss. See 8 C.F.R. § 214.14(a)(8). The AAO has also reviewed the record to determine whether the petitioner sustained substantial mental abuse, including physical ailments exacerbated by mental stress. Factors to consider when making this determination include the nature of the injury inflicted or suffered, (in this matter failing to provide a work authorization), the severity of the perpetrator's conduct, the severity of the harm suffered, (in this matter adjustment disorder/physical manifestations of the stress), 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. No single factor is a prerequisite to establish that the abuse suffered was substantial and the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. 8 C.F.R. § 214.14(b)(1).

Upon review of the record, the petitioner has not established that she suffered substantial physical or mental abuse. As discussed above, the petitioner has not established that she was a victim of the perpetrator's perjury. Although the petitioner has submitted letters and statements from her personal physician and counselor and pastors, the petitioner's distress arises from her lack of work authorization in the United States and fear that she will be found ineligible for U nonimmigrant status. Although the petitioner attributes her lack of work authorization to [REDACTED] unethical actions, his actions do not constitute criminal activity related to a qualifying crime. The opinions of the petitioner's personal physician and counselor that the petitioner was subjected to mental abuse due to the alleged perjury committed by [REDACTED] are unsubstantiated. Neither the petitioner's personal physician nor counselor provides a factual foundation to support their opinions. The record includes no evidence that [REDACTED] lied under oath about his role in bringing the petitioner to the United States and, thus, there is no evidence that the petitioner was the victim of [REDACTED] perjury or the investigation of [REDACTED] alleged perjury.

Moreover, the petitioner in this matter, shortly after [REDACTED] arrest in 2001, founded a personnel company with a partner and then a second personnel company when the partnership dissolved. The petitioner also indicated that she pursued a political science degree in Northern State University and had plans to attend law school. Thus, the record does not support a conclusion that the petitioner suffered permanent or serious harm to her appearance, health, physical, or mental soundness, based on an event that occurred in 2001. The record is lacking in the necessary information and evidence to establish that the petitioner has suffered substantial mental abuse as a result of having been a victim of qualifying criminal activity. 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.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as

required by section 101(a)(15)(U)(i)(II) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II).

Helpfulness to Law Enforcement

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authority investigating or prosecuting the qualifying criminal activity, as required by 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Qualifying Criminal Activity in Violation of U.S. Laws

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that the qualifying criminal activity violated the laws of the United States or occurred in the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, the petitioner has not met her burden in establishing that she was the victim of a qualifying crime and she has failed to provide evidence that she suffered substantial physical and mental abuse as a result of such victimization. She has not met any of the eligibility requirements at section 101(a)(15)(U)(i) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must be denied.

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