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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

D14

FILE:

Office: VERMONT SERVICE CENTER

Date: DEC 20 2010

IN RE:

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 service center director 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 on the basis of his determination that the petitioner had failed to establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, counsel submits a brief reasserting the petitioner’s eligibility and additional documentation.

*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) prescribes, in pertinent part, the following:

(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 [U.S. Citizenship and Immigration Services]. 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 definition:

- (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.

(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 . . . perjury . . . if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the . . . perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the . . . 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 of the 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.

### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who entered the United States without inspection in or around June 1995. He filed the instant Form I-918 on October 21, 2008. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on August 4, 2010. Counsel filed the instant appeal on September 3, 2010.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

### *Victim of Qualifying Criminal Activity*

The first issue before the AAO on appeal is whether the petitioner has demonstrated that he was a victim of a qualifying crime or criminal activity. The Form I-918, Supplement B (the "law enforcement certification"), which was signed by [REDACTED] (the "certifying official")<sup>1</sup> of the Multnomah County, Oregon Sheriff's Office on October 13, 2008, indicates that the petitioner was the victim of criminal activity involving, or similar to, perjury, involuntary servitude, trafficking, forced

<sup>1</sup> The certifying official's business card indicates that he is also a member of the Multnomah County Sheriff's Office Human Trafficking Task Force.

labor, and the conspiracy and attempt to commit any of those crimes. At part 3, item 3 of the law enforcement certification, the certifying official stated the following sections of the Oregon Revised Statutes and the United States Code as the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted:

Perjury under section 162.065 of the Oregon Revised Statutes:

A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false.

Involuntary servitude under section 163.263 of the Oregon Revised Statutes:

- (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
  - (a) Abusing or threatening to abuse the law or legal process;
  - (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
  - (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
  - (d) Threatening to collect an unlawful debt; or
  - (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.

Trafficking under section 163.266 of the Oregon Revised Statutes:

- (1) A person commits the crime of trafficking in persons if the person knowingly:
  - (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or

- (b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.26.

Forced labor under title 18, section 1589 of the United States Code :

- (a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—
  - (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
  - (2) by means of serious harm or threats of serious harm to that person or another person;
  - (3) by means of the abuse or threatened abuse of law or legal process; or
  - (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint,  
shall be punished as provided under subsection (d).
- (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).
- (c) In this section:
  - (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
  - (2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to

compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

- (d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

The certifying official submitted a March 10, 2010 letter in which he stated that the petitioner had worked as a safety officer for Hispanic employees at [REDACTED] in Portland, Oregon, and that during this time he witnessed dangerous working conditions as well as the mistreatment, harassment, and control of Hispanic workers.

In his October 16, 2008 self-affidavit, the petitioner stated that after he and his wife moved to Oregon from California, he began working for S-<sup>2</sup> as a baker. However, S- was unable to provide full-time employment, but S- told the petitioner that he would help him find a job at [REDACTED] where S- was also working as a production manager. S- assisted the petitioner in obtaining employment at [REDACTED] and the petitioner continued working for S- as a baker after his shifts at [REDACTED] ended. A few months later, S- told the petitioner to quit working at [REDACTED] as he needed the petitioner to work more hours for him as a baker. The petitioner refused, and S- became angry and retaliated by attempting to sabotage the petitioner's employment at [REDACTED]. According to the petitioner, S- began complaining about the quality of his work at [REDACTED] and accused him of stealing. The petitioner also described an occasion during which S- told the petitioner to accept a shipment of watermelons that the petitioner, who worked in quality control, had deemed unacceptable. However, the following day, when the petitioner was chastised for accepting a shipment of bad watermelons that could not be used, S- denied having told the petitioner to accept them. The petitioner stated that S- "did the same thing" on multiple other occasions.

The petitioner recounted another incident during which S- and another supervisor threatened a group of workers after S- overheard them in a breakroom discussing scheduling matters. Specifically, they were being told to work more than eight hours per day with no notice, which was problematic because most of them worked second jobs after finishing their shifts at [REDACTED]. According to the petitioner, S- and another manager stated in loud voices that employees who did not want to work would be fired, as there were many people waiting outside.

The petitioner also stated that he made reports documenting unsafe working areas every day. For example, he reported bare and disconnected wires lying in water and broken tires and arms on forklifts. The petitioner stated that although he and his immediate supervisor spoke with the general

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<sup>2</sup> Name withheld to protect individual's identity.

supervisors about such matters, they were ridiculed and told that there were more important things to worry about than “such stupid things about the work areas.” The following month, a forklift operator fractured his spine in an accident, and two employees suffered injuries on the forklifts shortly thereafter. The petitioner also described how pallets of fruit were routinely stacked on top of one another in violation of safety rules. According to the petitioner, it was “scary” to walk through the warehouse because if one of the stacks of pallets collapsed, someone could be killed. The petitioner stated that although stacks of pallets collapsed on several occasions, no one was injured. According to the petitioner, he raised this issue many times with management but was always ignored.

The petitioner also stated that supervisors called him and other employees names, and were generally disrespectful to the workers. The petitioner stated that he saw workers being ridiculed because of their ethnic background and, on another occasion, another worker told him that one of the production managers had sexually harassed her. On one occasion, after being treated disrespectfully he told a supervisor that even though he was a simple worker, he still wanted to be treated with respect. According to the petitioner, the supervisor laughed, asked the petitioner who he thought he was to come and complain, and told the petitioner that he could have him fired that day if he wished to do so.

The petitioner stated that working at [REDACTED] was emotionally difficult, and that he often left work angry and upset. He stated that although he wanted to help his fellow workers, he could do very little because he feared losing his job.

In his August 31, 2009 self-affidavit, the petitioner repeated many of his earlier assertions and added that during his time at [REDACTED] he witnessed managers subjecting workers to discrimination, threats, and humiliation. The petitioner stated that although he defended the workers, he was warned by management that he would be fired if her continued doing so, which was hugely frustrating because his family depended upon the income from his job.

In his March 11, 2010 self-affidavit, the petitioner again repeated many of his earlier assertions, and added further details. For example, the petitioner recounted another instance during which he notified a supervisor about the poor quality of some produce. According to the petitioner, the supervisor spoke to him in a very aggressive manner; yelled at him; asked the petitioner who he thought he was; and told the petitioner he could fire him that very moment. On another occasion, he reported electrical wires and cables in water, and was told by his supervisor that no one would do anything about them.

In his undated psychological evaluation of the petitioner, [REDACTED] stated that the petitioner told him that while working at [REDACTED] he felt like a piece of paper, because no one paid attention to his safety concerns. The petitioner’s description of his experiences at [REDACTED] to [REDACTED] largely mirrors those contained in his affidavits.

The petitioner also submitted several documents relating to an investigation of, and class action lawsuit against, [REDACTED]. In an October 15, 2007 news release, the Oregon Department of Consumer and Business Services stated that the Oregon Occupational Safety and Health Division intended to fine [REDACTED] and an affiliated staffing agency \$28,700 and cited them for multiple safety and health violations as a result of an inquiry into working conditions at the food packaging plant at which the petitioner worked. The petitioner also submitted a December 9, 2009 letter from the Oregon Law Center Farmworker Office stating that it had represented a class of individuals who worked for [REDACTED], and that a jury had returned a verdict in favor of those individuals for having required them to perform duties “off the clock.” The same jury also determined that [REDACTED] had violated a 2006 settlement regarding previous workplace violations. In his February 25, 2010 letter, [REDACTED] stated that he was one of the attorneys representing [REDACTED] workers in the class action lawsuit, that he interviewed the petitioner in preparation for the trial, and that the petitioner was very helpful. Finally, the petitioner submitted a news article regarding the investigation and lawsuit.

The petitioner also submitted a June 8, 2007 affidavit from [REDACTED] a special agent with the U.S. Immigration and Customs Enforcement Office of Investigations, which was filed before the U.S. District Court for the District of Oregon in order to obtain a search warrant of the [REDACTED] plant where the petitioner was employed. In his affidavit, [REDACTED] describes in detail his investigation into [REDACTED] employment of undocumented workers through the services of American Staffing.

As noted previously, the director found that the petitioner was not a victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act. The director found that although perjury, involuntary servitude, and trafficking are listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act, the petitioner had failed to establish that he had been the victim of those crimes.

On appeal, counsel claims that the “U statute does not require that the applicant establish the commission of a U crime” and that the petitioner need only show that “law enforcement was attempting to ‘detect’ and ‘investigate’ qualifying criminal activity of which he was a *potential* victim.” *Appeal Brief* at pp. 10-11 (emphasis added). Counsel further asserts that the regulations delegate the authority to determine the qualifying crime and whether the petitioner is a victim to the certifying agency and that USCIS “cannot second-guess law enforcement’s judgment.” *Id.* at 11. Counsel misreads the statute and regulations. The petitioner bears the burden of proof to establish his eligibility for U nonimmigrant classification. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). While the statute does not require a petitioner to establish the perpetrator’s guilt or prosecution under any federal or state criminal court, the petitioner must demonstrate that he was an actual victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I). The statute and regulations require a law enforcement certification to verify the petitioner’s victimization and eligibility under subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2)(i). The regulations do not, however, delegate any authority to determine the petitioner’s eligibility for U nonimmigrant

classification to the certifying agency; that authority rests with USCIS. Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). USCIS also determines “in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, ‘U Nonimmigrant Status Certification.’” 8 C.F.R. § 214.14(c)(4).

On appeal, counsel claims that the petitioner was the victim of perjury because [REDACTED] hired the petitioner, who has no authorization to be in the United States, with the knowledge that laws and legal processes related to his employment would be abused; that he would be threatened with arrest and deportation; that he would be made to fear workplace injuries; and that he would be deprived of the protection of regulations intended to protect him. According to counsel, [REDACTED] activities “violated occupational safety and health laws and were likely hidden from government regulators by perjury.” Counsel also refers to the testimony of [REDACTED] which indicates that certain [REDACTED] employees had side businesses selling false “green cards” and social security numbers.

Counsel’s claims are not supported by the record. As set forth above, perjury under section 162.065 of the Oregon Revised Statutes is committed when a false statement, which is known to be false, is made regarding a material issue. With regard to the health and safety conditions, the record does not demonstrate that [REDACTED] committed perjury in connection with such violations and counsel’s statement that such violations “were likely hidden from government regulators by perjury” is speculative and insufficient to establish that the petitioner was the victim of such perjury. The record is also devoid of any evidence that the petitioner was victimized by any perjury committed in connection with the sale of false “green cards” and social security numbers. Finally, counsel fails to articulate how the perpetrators committed perjury to avoid or frustrate efforts to investigate, arrest, or prosecute the perpetrators for other crimes; or to further the perpetrators’ abuse, exploitation or undue control over the petitioner through manipulation of the legal system. Accordingly, the petitioner does not meet the definition of the victim of perjury at 8 C.F.R. § 214.14(a)(14)(ii).

On appeal, counsel asserts that the petitioner was the victim of involuntary servitude because [REDACTED] through its managers: tried to force the petitioner to engage in employment services through abuse of the law and legal processes; made the petitioner fear retaliation when he reported health and safety violations; was falsely accused of criminal acts, implying the threat of arrest; threatened with deportation; and instilled into the petitioner the fear that he would be denied the necessities of life..

Again, the record does not support counsel’s claims. There is no evidence that [REDACTED] forced or attempted to force the petitioner to work by abusing or threatening to abuse the law or legal process. Contrary to counsel’s assertions on appeal, the petitioner himself never stated that anyone at [REDACTED] threatened him with arrest and deportation. The petitioner recounted that when he defended himself and other workers from mistreatment, [REDACTED] managers told him he could be fired. The petitioner does not describe any incident where [REDACTED] employees specifically threatened him with arrest and deportation. The threat of possible termination of the petitioner’s employment does not constitute involuntary servitude under Oregon law.

The record also does not support counsel's claim on appeal that the petitioner was the victim of trafficking because [REDACTED] obtained the petitioner's services knowing he would be subjected workplace conditions that would include involuntary servitude. As set forth previously, a showing of involuntary servitude is necessary in order to establish victimization under the Oregon trafficking statute. Or. Rev. Stat. Ann. § 163.266 (2009). As the petitioner has not made that demonstration, he has not established that he was the victim of trafficking.

Finally, the petitioner has not established that he was the victim of forced labor pursuant to 18 U.S.C. § 1589 or that this statute is substantially similar to one of the qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act. On appeal, counsel does not address the petitioner's victimization under 18 U.S.C. § 1589, as listed on the law enforcement certification, but instead asserts that the petitioner was the victim of forced labor under 18 U.S.C. § 1584, which criminalizes the sale of individuals into involuntary servitude. As previously explained, the relevant evidence does not demonstrate that the petitioner was the victim of involuntary servitude under Oregon law and counsel does not establish on appeal that the petitioner was subjected to involuntary servitude under the federal statute. The record also does not indicate that the petitioner was the victim of forced labor under 18 U.S.C. § 1589, the crime listed on the law enforcement certification. The record does not show that [REDACTED] obtained the petitioner's labor by means of force, threats of force, physical restraint, or threats of physical restraint to him or to another; by means of serious harm or threats of serious harm to him or to another; by means of the abuse or threatened abuse of law or legal process; or by means of any scheme, plan, or pattern intended to cause the petitioner to believe that if he did not work for [REDACTED] he would suffer serious harm or physical restraint.

The petitioner's supporting documentation, including [REDACTED] affidavit, the information regarding the class action lawsuit against [REDACTED] and the information regarding fines leveled against [REDACTED] for workplace violations, establish [REDACTED] illegal practices and mistreatment of workers during the time of the petitioner's employment with the company. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that he was himself subjected to perjury, involuntary servitude, trafficking, or forced labor.

The record also clearly shows that the petitioner was helpful to the certifying agency in its investigation of [REDACTED] and American Staffing and that he possessed information about [REDACTED] mistreatment of its workers and unsafe facilities. The petitioner also assisted attorneys in their class-action lawsuit against [REDACTED] for wage and hour violations. While the petitioner's assistance in these legal actions against [REDACTED] was undoubtedly valuable and laudable, his own victimization has not been established. In his letter, [REDACTED] the certifying official does not specifically identify any criminal activity of which the petitioner was a victim. Rather, he states that the petitioner "witnessed dangerous working conditions, mistreatment, harassment, and control" of other workers. [REDACTED] references "attached MCSO report [REDACTED] but that report is not in the record of these proceedings. The petitioner himself states that he witnessed the mistreatment of other workers, worked in unsafe conditions and was told on several occasions that he could be fired. The petitioner's statements do not, however, indicate that during his employment at the [REDACTED] facility he was

subjected to forced labor, trafficking, or involuntary servitude, or that he was the victim of perjury or any attempt or conspiracy to commit any of these qualifying crimes as stated on the law enforcement certification.

The petitioner has not established that he was the victim of a qualifying crime or criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act.

*Remaining Eligibility Criteria*

Being a victim of qualifying criminal activity is a threshold requirement for the remaining U nonimmigrant eligibility criteria at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. *See* 8 C.F.R. § 214.14(b), (c)(2). Because the petitioner has not demonstrated that he was the victim of qualifying criminal activity, he cannot meet any of the eligibility criteria for U nonimmigrant classification.

*Conclusion*

As set forth above, the petitioner has failed to establish that he was the victim of qualifying criminal activity or that he meets any of the eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.