

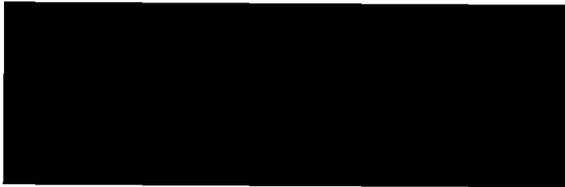
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY



D14

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **NOV 12 2010**

IN RE: Petitioner: [Redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:



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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 sustained in part and dismissed in part. The petition will remain denied.

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 he had been the victim of a qualifying crime or criminal activity; that he had suffered substantial physical or mental abuse based on the qualifying criminal activity; and, that consequently he could not establish any of the statutory eligibility requirements which all include that the crime is a qualifying crime or criminal activity. On appeal, counsel submits a statement.

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:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department

of Labor.

(3) *Certifying official* means:

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

* * *

(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.

* * *

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

* * *

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the

petitioner through manipulation of the legal system.

The regulation at 8 C.F.R. § 214.14(b) provides the following:

Eligibility. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien 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, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . . ; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 Mexico who claims that he has resided in the United States since 1989. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on April 7, 2008. In the petitioner's March 28, 2008 declaration in support of the Form I-918 U petition, the petitioner declared: that in 1997 he went to the office of Laura Friend, who claimed to be an attorney who could assist him

in obtaining legal status in the United States; that [REDACTED] filed several petitions and applications on his behalf; that he paid her each time she asked for funds; and that his immigration status was still pending in 2005 when [REDACTED] retired from her claimed legal offices. The petitioner further declared that not until September 1, 2005, when he met his current attorney, did he understand that the petitions filed on his behalf had been denied and that he had been placed in removal proceedings. The petitioner stated: that he and his wife paid over \$16,000 to have their immigration status legalized; that Ms. Friend misrepresented that she was an attorney; and that [REDACTED] took advantage of him and his wife because they were immigrants.

The petitioner also attached the requisite Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) signed by [REDACTED], which is dated March 24, 2008. The Form I-918 Supplement B at Part 3, Item 1 identifies the criminal activity as perjury and solicitation to commit any of the named crimes. 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 [California] Penal Code Section 127. The Form I-918 Supplement B at Part 3, Item 5 describes the criminal activity being investigated and/or prosecuted as "procuring another to commit perjury, and grand theft" and at Part 3, Item 6, describes the documented injury to the petitioner as "financial loss/post traumatic stress disorder." [REDACTED] incorporates by reference a U Visa Certification Form signed on October 18, 2006 by Benjamin R. [REDACTED], a law enforcement officer employed as an investigator by the Orange County District Attorney's Office. [REDACTED] indicated that the petitioner and several other individuals were victimized by [REDACTED] who filed applications and petitions without their knowledge or permission, omitted information regarding the risks of deportation, collected money from them, and failed to assist them with their immigration status. [REDACTED] noted in particular that [REDACTED] filed an application for political asylum on the petitioner's behalf.¹ [REDACTED] indicated that the Orange County District Attorney's Office was in the final stages of its investigation of [REDACTED] and that it was vital to the successful prosecution of the case to have victims/witnesses who could testify about the facts of the case as it pertained to them.

On September 8, 2009, the director issued a Notice of Intent to Deny (NOID) the application. The director noted that the criminal activity being investigated was a violation of section 127 of the California Penal Code which provides:

Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

The director noted further that while perjury is a qualifying crime, the petitioner had not established that

¹ We note that the petitioner's record does not include evidence that an asylum application signed by him was filed on his behalf. The record does show, and as is supported by the petitioner's initial declaration, that [REDACTED] assistance to the petitioner centered on labor certifications and suspension of deportation petitions.

he had been the victim of perjury or that he had suffered substantial physical or mental abuse based on that victimization. The director further informed the petitioner that pursuant to 8 C.F.R. § 214.14(a)(14)(ii) to establish that he had been a victim of perjury he must show that the perpetrator principally committed the offense as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system.

In rebuttal, counsel for the petitioner submitted an October 23, 2009 letter signed by [REDACTED] who stated:

The suspect, [REDACTED] is accountable for subordination of perjury since she caused the victim, [the petitioner] to unknowing commit perjury on Federal Forms. [REDACTED] false assurances led [the petitioner] to unknowingly perjure himself by signing a "sham" asylum application, which unknown to him, lacked any legitimate basis.

* * *

[REDACTED] guaranteed that she would attain legal status for him, when in fact she could not. From 1997 to 2002 she exercised undue control over [the petitioner's] case by misleading both him and the legal system. All the while, [the petitioner] desperately complied with all her requests regarding his immigration case while she collected huge sums of money from him and his wife. He had no idea that [REDACTED] had used his own signature on a "sham" application to defraud him for over five years.

Counsel also provided the petitioner's statement wherein he declared that unknown to him [REDACTED] had filed a sham asylum application on his behalf but had told him that she was filing labor certifications on his behalf.

On February 24, 2010, the director denied the petition determining that although the petitioner may have been made to commit perjury by signing a "sham" asylum application provided by [REDACTED] the petitioner had not demonstrated that he had been the victim of another person's commission of perjury.

On appeal, counsel maintains that the petitioner is the victim of [REDACTED] perjurious acts which caused the petitioner's suffering of depression, feelings of hopelessness, and suicidal ideation.

The Offense of Which the Petitioner was a Victim

As referenced above, when filing his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B which identified the criminal activity as perjury and solicitation to commit any of the named crimes at Part 3, Item 1. 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 [California] Penal Code Section

127. As the director noted, California Penal Code section 127 provides that a “person who willfully procures another person to commit perjury is guilty of subornation of perjury.” Section 127 also states that a person who willfully procures perjury is punishable as if the person is personally guilty of the perjury procured. Suborning or procuring perjury, in this matter, is the same as or substantially similar to soliciting perjury. As perjury is not a crime against a person, the regulation at 8 C.F.R. § 214.14(a)(14)(ii) sets out criteria to assist in identifying the victim of the perjury, or in this matter the victim of the solicitation of perjury. The regulation identifies a petitioner as a possible victim of perjury if the petitioner has been directly or proximately harmed by the perpetrator of the solicitation of perjury and there are reasonable grounds to conclude that the perpetrator committed the solicitation of perjury to further the perpetrator’s abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.² 8 C.F.R. § 214.14(a)(14)(ii)(A) and (B)(2). The petitioner in this matter is a victim of the perpetrator’s procurement of perjury as the perpetrator solicited the perjury to further her abuse or exploitation of the petitioner through the manipulation of the legal system. The petitioner has established that he was the victim of a qualifying crime, and the director’s determination to the contrary is withdrawn.

Substantial Physical or Mental Abuse

The petitioner in this matter provided a November 24, 2006 evaluation prepared by [REDACTED] [REDACTED] indicated that the petitioner reported that he had suffered emotional and psychological harm from being robbed of several thousand dollars but more particularly, he had experienced disillusionment, confusion, and distrust toward helping professionals due to his experience with [REDACTED] further indicated that the petitioner reported that the psychological harm he had suffered was augmented by his awareness that he would not obtain legal permanent residency and that [REDACTED] had not explained many of his legal rights. [REDACTED] noted that the petitioner reported shock once [REDACTED] fraud and deceit had been demonstrated to him and he learned that he had paid money for her services. [REDACTED] noted that the petitioner stated that he felt increased insecurity, anxiety, distrust of others, depression and that the primary impact continued to be the disrupted relationship with his wife brought on by her anger of the alleged fraud. [REDACTED] noted the petitioner’s report that in spite of the stressors in his life, he maintained a strong commitment to the financial support of his family and continued participation in religious services. [REDACTED] found, based on his clinical interview of the petitioner and of psychological testing performed, that the petitioner experienced fear and anxiety related to the possibility that he and his family could be removed from the United States, that he experienced sadness and significant uncomfortable emotions, acute distress and emotional instability that appeared directly related to the alleged fraud. [REDACTED] diagnosed the petitioner with generalized anxiety disorder, post traumatic stress disorder, chronic primary insomnia and listed the psychological stressors as fear of imminent deportation, legal system, and marital difficulties. [REDACTED] recommended that the petitioner obtain professional

² The record does not show that the perpetrator solicited the perjury to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity. 8 C.F.R. § 214.14(a)(14)(ii)(B)(1).

assistance.

In response to the director's Notice of Intent to Deny (NOID) the petition, counsel for the petitioner provided the petitioner's October 22, 2009 statement. The petitioner declared: that he had suffered extensive mental abuse as a result of [REDACTED] fraudulent activities, including signing sham applications that would put him through the legal system; that he lost his sense of self-worth; that his wife blamed him for signing documents that he had not read and that their arguments resulted in the deterioration of his marriage; and that he feels that he has failed as a father. The petitioner noted that he had been separated from his wife since 2007, that he had been diagnosed with chronic depression, and that he had suicidal thoughts.

Counsel also submitted an addendum report dated October 19, 2009 prepared by [REDACTED] as a follow-up to his November 2006 report. [REDACTED] opined that the "misrepresentation allegedly committed by the paralegal, [REDACTED], appears to be the proximate cause to the emotional, behavioral, and relationship problems that have ensued on the part of [the petitioner and his wife]. [REDACTED] noted that the petitioner had not availed himself of counseling support and had reported continuing mental instability, disruptive thoughts relative to suicide ideation, and impresses as emotionally fragile.

The AAO has reviewed the record to determine whether the petitioner sustained substantial mental or physical abuse. Factors to consider when making this determination include 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. 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). 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. 8 C.F.R. § 214.14(a)(8).

The petitioner has not provided evidence that the perpetrator's suborning of his perjury caused the petitioner permanent or serious harm to his appearance, health, physical, or mental soundness. Upon review of the petitioner's statements and those of [REDACTED], the petitioner's suffering and mental instability relates to his lack of immigration status. It is not possible to directly connect the petitioner's mental condition to the actions of the perpetrator. The record does not reveal that the petitioner in this matter, while in the United States without a lawful status, would have obtained legal status but for the actions of the perpetrator. There are a myriad number of intervening factors that could have resulted in the petitioner's failure to obtain legal immigration status. Thus, a direct causal link has not been established between the perpetrator's suborning of the petitioner's perjury and the petitioner's current mental condition. The record is lacking in the necessary information and evidence to establish that the petitioner has suffered substantial mental abuse as the victim of a qualifying crime. 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 was helpful in the investigation of criminal activity involving suborning of perjury pursuant to California Penal Code section 127 and the offense is the same or substantially similar to soliciting perjury, a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act, the petitioner has not demonstrated that he suffered substantial physical or mental abuse as a result of the qualifying crime. Accordingly, the petitioner has not demonstrated that he meets all the statutory eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his 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 sustained in part and dismissed in part. The petition will remain denied.