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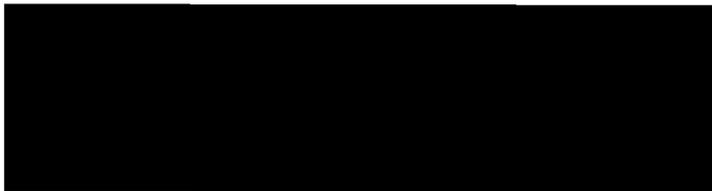
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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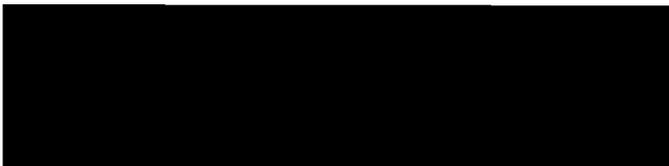


FILE:  Office: VERMONT SERVICE CENTER Date: NOV 19 2010

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:✓

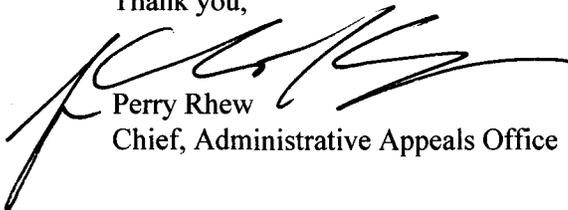


INSTRUCTIONS:

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. 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 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 she 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.

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:

(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 to 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 petitioner is a citizen of Mexico who entered the United States without inspection on or around July 1, 1989. She filed the instant Form I-918 on March 7, 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 March 22, 2010. Counsel filed a timely appeal on April 2, 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, the AAO finds 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 she was a victim of a qualifying crime or criminal activity.

The Form I-918, Supplement B (the "law enforcement certification"), which was signed by a Deputy District Attorney (the "certifying official") for the Orange County, California District Attorney's Office on February 29, 2008, indicates that the petitioner was the victim of criminal activity involving, or similar to, extortion; perjury; grand theft; witness tampering; and solicitation to commit any of those crimes. At part 3, item 3 of the law enforcement certification, the certifying official stated that the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted fell under sections 664/127 and 487 of the California Penal Code. The certifying official stated on an attachment to the law enforcement certification that the petitioner had been victimized by a fraudulent immigration scheme.

As noted, the certifying official stated on the law enforcement certification that the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted, fell under three statutes. The first criminal activity being investigated or prosecuted falls under Cal. Penal Code §§ 664 and 127. Cal. Penal Code § 127 (2009) states, in pertinent part, the following:

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.

Cal. Penal Code § 664 (2009) states, in pertinent part, the following

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows. . . .

The second criminal activity being investigated or prosecuted falls under Cal. Penal Code § 487 (2009) which states, in pertinent part, the following:

Grand theft is theft committed in any of the following cases:

- (a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400)

The certifying official also stated that the petitioner had been victimized by criminal activity involving, or similar to, extortion and witness tampering. He did not, however, state at part 3, item 3 of the law enforcement certification that extortion and witness tampering were being, or had been, investigated or prosecuted by his office.

On the attachment to the law enforcement certification, the certifying official stated that the petitioner hired La Guadalupana (LG) to provide immigration services on or around December 17, 2001. According to the certifying official, the petitioner initially sought the services of [REDACTED] in order to inquire about the status of a previously-filed immigrant petition and, while there, was told she qualified for a social security number and employment authorization. Accordingly, she returned with her fiancé and they met with [REDACTED] who, though not an attorney, held himself out as one. The petitioner was told she qualified for immigrant status and told to sign a contract and other documents. Although the petitioner believed she would be filing for status through her father, [REDACTED] filed an asylum application on her behalf. When the petitioner learned that an asylum application had been filed, she told [REDACTED] she did not wish to attend the asylum interview because she did not qualify for that benefit. However, the petitioner was told that she would be deported if she did not attend the interview. Several months later, in March 2003, [REDACTED] and other [REDACTED] staff members were arrested and charged with grand theft and conspiracy to cheat and defraud clients by providing fraudulent immigration services. The certifying official stated that although [REDACTED] and other [REDACTED] staff members were arrested, after their release on bond they fled to Mexico. There are outstanding warrants for their arrests, and the Orange County District Attorney's Office is still in the process of investigating and prosecuting [REDACTED]. Although the petitioner obtained other counsel, by that point she had limited immigration relief available. The certifying official noted that the petitioner paid approximately \$4,500 to [REDACTED] for its services.

In her March 6, 2008 declaration, the petitioner stated that her first meeting with ██████████ took place on February 20, 2001. On that date and in a subsequent visit, ██████████ and his wife asked the petitioner and her husband several questions and, on January 2, 2002, he called the petitioner and told her she needed to come to his office immediately, which she did. The petitioner stated that although she signed a document, she did not understand what she had signed because it was in the English language. She made her first payment to LG a few days later, on January 7, 2002. On April 22, 2002, she received a notice from the legacy Immigration and Naturalization Service (INS) and, after speaking with ██████████, learned that he had filed an asylum application. The petitioner stated that she was angry, and told ██████████ that she would not attend the asylum interview. According to the petitioner, he told her that if she did not attend, INS would arrest her.

USCIS records show that the petitioner's asylum application was filed on April 22, 2002, that she was interviewed on June 8, 2002, and that her case was referred to an immigration judge on June 19, 2002. Before the immigration judge, the petitioner withdrew her asylum application. The immigration judge granted the petitioner voluntary departure with an alternate order of removal should she fail to timely depart. The petitioner did not comply with the voluntary departure order and became subject to a final order of removal, but was released under an order of supervision on January 14, 2008.

The petitioner also submitted a September 15, 2003 news article which discussed ██████████ and his activities; an undated notice from the website of the Orange County District Attorney's Office stating that it had filed charges against ██████████ and other employees of ██████████ and a March 20, 2003 letter from the Orange County District Attorney's Office to the legacy INS notifying the agency that it was in the process of investigating and prosecuting ██████████ and ██████████.

Upon review of the evidence of record, we find that the petitioner has failed to establish that she was the victim of qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9). According to the law enforcement certification, the first criminal activity being investigated or prosecuted is subornation of perjury, and the attempt to commit subornation of perjury. The petitioner, however, has not shown that she was a victim of that crime. She has not shown that ██████████ or any other employee of ██████████ "willfully procured" her to commit perjury. The petitioner withdrew the asylum application filed by ██████████ on her behalf¹ after she retained an attorney to represent her before the immigration judge. Although the certifying official indicated that the petitioner was the victim of subornation of perjury on the certification form, he stated in his attachment that the petitioner did not want to pursue the asylum application because she knew she did not qualify for asylum. Rather than explaining how the petitioner was the victim of any perjury offense, the certifying official's supplementary statement indicates that the petitioner was primarily the victim of fraud perpetrated by ██████████ and other ██████████ associates.

¹ See Form I-589, Application for Asylum and for Withholding of Removal, filed April 22, 2002.

Although the law enforcement certification also states that grand theft was investigated or prosecuted, grand theft does not constitute qualifying criminal activity pursuant to section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9), nor is it similar to any of the offenses enumerated in those provisions.

Although the certifying official indicated that the petitioner was also the victim of extortion and witness tampering, he did not indicate that his office was investigating or prosecuting those crimes. Neither the certifying official nor counsel cited any statutory definition of these crimes or provided any further information sufficient to demonstrate that the petitioner was subjected to either of those crimes by [REDACTED] or any employee of [REDACTED].

The petitioner has not established that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act and as defined at section 101(a)(15)(U)(iii) of the Act and the regulation at 8 C.F.R. § 214.14(a)(9), (14), and has not overcome this ground of the director's denial.

Substantial Physical or Mental Abuse

As the petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of such victimization, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, the petitioner has not satisfied this criterion, and has not overcome this ground of the director's denial.

Possession of Information Concerning Qualifying Criminal Activity

The record shows that the petitioner possessed information and was helpful to the certifying agency investigating immigration fraud. The relevant evidence does not demonstrate, however, that such fraud encompassed a qualifying crime or criminal activity. Accordingly, the petitioner has not established that she possessed information concerning a qualifying 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), and she has not overcome this ground of the director's denial.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The record shows that the petitioner has been and would be helpful to the certifying agency investigating the immigration fraud and theft perpetrated by [REDACTED] and [REDACTED]. The relevant evidence does not, however, indicate that any qualifying crime or criminal activity was committed in the course of that fraud and theft. Accordingly, the petitioner has also failed to establish her helpfulness to authorities investigating or prosecuting a qualifying crime or criminal activity, as required by 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III), and she has not overcome this ground of the director's denial.

Qualifying Criminal Activity in Violation of U.S. Laws

As the record fails to establish that a qualifying crime or criminal activity was perpetrated against the petitioner, she has also failed to establish that such 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 set forth above, the petitioner has failed to establish that she was the victim of qualifying criminal activity or that she meets any of the eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act, and her 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.