

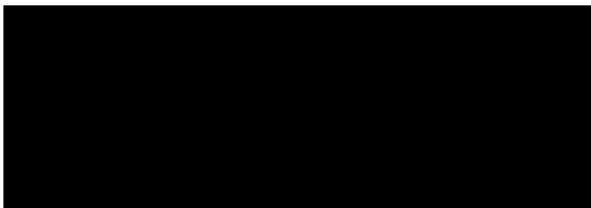
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D14

Date: Office: VERMONT SERVICE CENTER

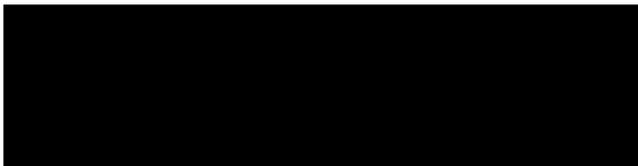
APR 18 2011

FILE: [REDACTED]
EAC 09 214 50377

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, 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 Petition for U Nonimmigrant Status (Form I-918 U 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 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 Notice of Appeal (Form I-290B) reasserting the petitioner's eligibility.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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 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:

(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.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico. In 2000, the petitioner entered the United States without inspection. In 2003, the petitioner returned to Mexico. On May 31, 2003, the petitioner reentered the United States without inspection. On January 24, 2008, the petitioner filed an Application for Asylum and Withholding of Removal (Form I-589). On March 5, 2008, the Form I-589 was referred to an immigration judge and the petitioner was placed into immigration proceedings. The petitioner remains in removal proceedings and her next hearing date is scheduled for June 15, 2011.

On July 28, 2009, the petitioner filed the instant Form I-918 U petition. On February 17, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On October 21, 2010, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the director failed to consider the possibility of future criminal charges against the perpetrator of the perjury and that the investigation is on-going as a result of extensive investigations by the Orange County District Attorney's Office; the director incorrectly determined that the petitioner was not directly or proximately harmed by the perpetrator of the crime; and the director incorrectly determined that extortion or fraud is not a qualifying criminal activity.

The Claimed Criminal Activity

The petitioner claimed in her July 8, 2009 affidavit that she and her husband were the victims of qualifying criminal activity because she was placed into in removal proceedings as a result of a notario lying to her and her husband by stating that he could obtain permanent residency for them. The petitioner claimed that the notario began threatening to call immigration to come and arrest her and her husband at their house and to deport them by force.

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Assistant District Attorney [REDACTED] (certifying official) of the Orange County District Attorney's Office. At Part 3.1, the certifying official indicated that the petitioner was the victim of criminal activity involving, or similar to, extortion and perjury. At Part 3.3, the certifying official cited the following sections of the California Penal Code (CPC) as the criminal activity:

Perjury under section 118 of the CPC provides:

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.
(West 2011)

Grand theft under section 487 of the CPC provides:

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 nine hundred fifty dollars (\$950), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1)(A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars (\$250).

(B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars (\$250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars (\$250) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars (\$250).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars (\$950) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(2) A firearm.
(West 2011)

Extortion under section 518 of the CPC provides:

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

(West 2011)

At Part 3.5, [REDACTED] did not describe the criminal activity being investigated or prosecuted. Part

3.5 referred to an "attached declaration"; however, none was attached. At Part 3.6, [REDACTED] did not describe any known or documented injury to the petitioner.

In response to the director's RFE, the petitioner submitted a letter, dated June 17, 2009, which was signed by [REDACTED] an Investigator with the Orange County District Attorney's Office. [REDACTED] stated that the petitioner and his spouse are witnesses in an open case that the Orange County District Attorney's Office intends to prosecute. [REDACTED] states that the open case being investigated is an Immigration Fraud case against A-F,¹ the notario. [REDACTED] states that the notario promised the petitioner permanent residency in the United States, collected thousands of dollars from the petitioner, and channeled her political asylum application into Federal Court without her knowledge or consent. [REDACTED] states that the petitioner was not informed that political asylum applications have to be filed within a year of entering the United States; that political asylum application from Mexico are rarely granted; or that the petitioner could be deported as a result of filing the political asylum application. [REDACTED] states that the petitioner is cooperative and ready, now and in the future, to assist in the case which makes her a valuable and possibly critical witness which the office will eventually need to successfully prosecute the case.

In response to the director's RFE, the petitioner also submitted an affidavit, dated May 14, 2010, from her spouse. The petitioner's spouse states that he met the notario through the owner of the apartment in which he resided. He stated that the notario informed him that he could fix his legal documents to be able to stay in the United States. He stated that the notario informed him that he was a lawyer with other lawyers working for him and that he was instructed to complete an application and bring some documents such as pay stubs and birth certificates. He stated that once he brought the application and documents to the notario, he started a contract to start the process without including \$750 which he had already paid to the notario. He stated that, when he returned to the notario's office, the notario told him to sign a form over which he placed his hand. He stated that the notario placed the form in an envelope and had him mail it out. He states that he received a document which the notario informed him was a notice to appear for an interview. He claims that when he appeared at the interview he was informed that he was applying for political asylum at which time he realized that something was wrong. He stated that when he attempted to confront the notario, the notario told him that everything was going well and that he should not worry. He stated that, after consulting with other individuals, he was convinced that something was wrong and confronted the notario again. He stated that the notario got very upset with him and told him not to worry. He claims that when he informed the notario that he had friends who had problems after going through the same process, the notario got mad and told him that he had to trust him. He stated that he then consulted with a friend's immigration attorney who informed him that the work performed by the notario was a fraud and that he could be deported. He stated that he confronted the notario again and informed him that he was not going to pay him anything else. He claims that the notario became furious and said it was the last time he going to tell him to trust him because everything was going perfectly fine and not to listen to other people who were just confusing him. He claims that the notario then stated that if he did not pay him he would turn him into immigration. He stated that he became scared and asked him not to do it and that he would pay him. He stated

¹ Name withheld to protect individual's identity.

that this is when his business relationship with the notario ended.

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 and extortion are listed as qualifying crimes at section 101(a)(15)(U)(iii) of the Act, the petitioner had failed to establish that she had been the victim of those crimes.

On appeal, counsel claims that the petitioner was the direct victim and suffered proximate harm as a result of perjury, extortion and fraud.

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 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). U.S. Citizenship and Immigration Services (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).

Grand Theft Under C.P.C. § 487 is Not Substantially Similar to the Qualifying Crime of Extortion and the Petitioner has not Established that she was the Victim of Extortion

Although the crime of extortion is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of that crime (as well as grand theft and perjury), the certifying official did not provide any explanation of how the petitioner was a victim of extortion. The only clarifying evidence is the letter from [REDACTED] briefly describing the criminal activity and the petitioner's involvement in, and victimization from, such criminal activity. [REDACTED] does not explicitly state the criminal activity being investigated, or provide the statutory citations for the crimes that his office is investigating. Without further information from the certifying agency, the Form I-918 Supplement B is deficient. We, therefore, do not consider the crime of extortion to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute the notario in the future for such a crime.

The crime of grand theft is not a statutorily enumerated crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9).

On appeal, counsel states that the director incorrectly determined that extortion is not a qualifying criminal activity.² Under California law, grand theft is committed "when the money,

² The AAO notes that counsel also refers to fraud as a qualifying criminal activity, however, the statute does not list fraud as a qualifying criminal activity and the certifying official did not list fraud on the Form I-918 Supplement B.

labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)” (West 2011).

Extortion is defined under section 518 of the CPC as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” (West 2011).³

Grand theft is not substantially similar to extortion. Extortion under section 518 of the CPC requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear, or under color of official right.” Grand theft under section 487(a) of the CPC contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of grand theft is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

The Petitioner was not a Victim of Perjury

As noted above, although the crime of perjury is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime and the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of that crime (as well as grand theft and extortion), the certifying official did not provide any explanation of how the petitioner was a victim of perjury. The only clarifying evidence is the letter from [REDACTED] briefly describing the criminal activity and the petitioner’s involvement in, and victimization from, such criminal activity. [REDACTED] does not explicitly state the criminal activity being investigated, or provide the statutory citations for the crimes that his office is investigating. Without further information from the certifying agency, the Form I-918 Supplement B is deficient. We, therefore, do not consider the crime of perjury to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute the notario in the future for such a crime.

Even if the petitioner had established that the crime of perjury was investigated or prosecuted, the relevant evidence does not establish that the petitioner was the victim of perjury.

Under section 127 of the CPC, subornation of perjury is defined as: “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.” (West 2011).

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that the notario procured her to commit perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise

³ Under section 524 of the CPC, a threat or an attempt to extort is defined as: “Every person who attempts, by means of any threat, such as is specified in Section 519 of this code, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.”

bring it to justice for other criminal activity; or (2) to further its abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The evidence in the record does not demonstrate that the notario suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity. The only evidence of law enforcement action against the notario is the letter from ██████████ indicating that the notario is under an ongoing and open investigation nearly two years after the petitioner signed her asylum application. As the letter indicates that the notario is being investigated for immigration fraud, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application would avoid or frustrate the district attorney's prosecution efforts, as the crime would only provide further evidence of the notario's malfeasance.

Counsel has also not established that the notario committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. Apart from having the petitioner sign an asylum application and filing the application with USCIS, the relevant evidence does not indicate that any of the notario's subsequent dealings with the petitioner and her husband involved perjury. The record shows that the notario filed the asylum application shortly after being retained by the petitioner and her husband and, thus, if perjury were committed, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by the notario, the exploitation resulted from fraud as well as the notario's subsequent misleading interactions with the petitioner, not from any perjury under section 118 of the CPC. Accordingly, we do not find that the notario suborned the petitioner's perjury, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system.

Remaining Eligibility Criteria

The petitioner's supporting documentation establishes the notario's fraudulent dealings, inadequate legal advice and theft. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that she was herself subjected to perjury or extortion.

The record does show that the petitioner was helpful to the certifying agency in its investigation of the notario and that she possessed some information about the notario's fraudulent business practices. While the petitioner's assistance to the certifying agency may have been valuable and was laudable, her own victimization has not been established. In ██████████ letter, he does not specifically identify any criminal activity of which the petitioner was a victim. Rather, he states that the petitioner was not informed of the legal consequences of filing an asylum application and paid thousands of dollars for an application that would eventually fail to provide her with the promised permanent residency. The petitioner's statements do not indicate that during her business relationship with the notario, she was the victim of perjury or extortion or any attempt or conspiracy to commit any of these qualifying crimes as stated on the law enforcement certification.

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 she was the victim of qualifying criminal activity, she cannot meet any of the eligibility criteria for U nonimmigrant classification.

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 subsections 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. The petition remains denied.