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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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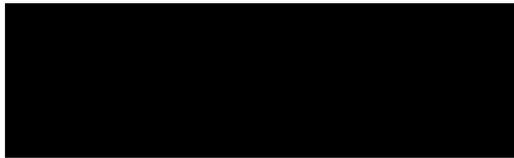
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 10 2011

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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition finding that the petitioner 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, the petitioner contends through counsel that he was the victim of the qualifying crimes of involuntary servitude, trafficking, and perjury, and that he meets the remaining requirements for U nonimmigrant classification.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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[.]

“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.” 8 C.F.R. § 214.14(a)(9). Further, the regulations state that 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 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.

8 C.F.R. § 214.14(a)(14)(ii). However, “[a] person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(iii).

Under section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

Pursuant to the regulations, a petitioner must file a Form I-918, Petition for U Nonimmigrant Status, to request U nonimmigrant classification. 8 C.F.R. § 214.14(c)(1). The Form I-918 must be accompanied by certain supporting documentation or “initial evidence,” including a “Form I-918, Supplement B, ‘U Nonimmigrant Status Certification,’ signed by a certifying official within the six months immediately preceding the filing of Form I-918.” 8 C.F.R. § 214.14(c)(2)(i).

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).

Facts and Procedural History

The record reflects that the petitioner is a native and citizen of Guatemala who entered the United States without being admitted or paroled on or around June 20, 2002. The petitioner states that he began working for [REDACTED] Oregon, in January, 2003. On June 12, 2007, the petitioner was arrested during the execution of a federal search warrant on the petitioner's employer, and he was placed in removal proceedings. On July 1, 2009, the Director of the Human Trafficking Task Force of the Multnomah County Sheriff's Office certified that the petitioner is the victim of criminal activity involving peonage (involuntary servitude), perjury, trafficking and attempt and conspiracy to commit the named crimes, committed by [REDACTED] *Form I-918 Supplement B*, dated July 1, 2009; *Letter from* [REDACTED] dated Aug. 26, 2010.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on August 21, 2009. On June 11, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner filed a timely appeal.

Analysis

Here, the certifying official indicated on Part 3.1 of Form I-918 Supplement B that the petitioner is the victim of trafficking. *Form I-918 Supplement B*. However, the certifying official stated that the only crimes investigated or prosecuted by the certifying agency were perjury under section 162.065 of the Oregon Revised Statutes (ORS) and peonage (second degree involuntary servitude) under ORS section 163.263. *See Form I-918 Supplement B*, Part 3.3. Because the petitioner must show that he is the victim of a qualifying crime investigated or prosecuted by the certifying agency, *see* 8 CFR 214.14(b)(3), (c)(2)(i), he cannot establish that he was the victim of trafficking and we can only consider whether or not he is the victim of perjury or involuntary servitude.

The petitioner has failed to meet his burden of showing that he is the victim of the qualifying crimes of perjury or involuntary servitude. First, under ORS section 162.065(1), "[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." Here, the certifying official stated that "[t]he criminal activity being investigated is perjury regarding [REDACTED] and the I-9 form." *Form I-918 Supplement B*, Part 3.5. The petitioner contends that [REDACTED] "is being investigated for perjuring I-9 forms due to providing false documentation to undocumented immigrants." *Brief on Appeal* at 8. Because the applicant

procured work by providing false documents that he purchased, *see Personal Statement of* [REDACTED] [REDACTED] dated Aug. 23, 2010, he also is culpable of misrepresenting his authorization to work, and he cannot be recognized as a victim of the crime of perjury, *see* 8 C.F.R. § 214.14(a)(14)(iii) (If a petitioner “is culpable for the qualifying criminal activity being investigated or prosecuted[, he is] excluded from being recognized as a victim of qualifying criminal activity.”).

Second, the petitioner has not met his burden of showing that he is the victim of involuntary servitude under state or federal law. Under ORS section 163.263(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.

Under federal law,

the term ‘involuntary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

United States v. Kozminski, 487 U.S. 931, 952 (1988).

Here, the certifying official stated that [REDACTED] was using perjury in order to obtain labor, thereby committing involuntary servitude.” *Form I-918 Supplement B*, Part 3.5. The petitioner contends that he was forced to work for [REDACTED] because of the fear that if he did not work, he would be fired, and as an illegal immigrant he would be unable to find other employment, resulting in physical injury and the loss of the necessities of life. *See Brief on Appeal* at 5-6. Additionally, the petitioner

contends that he was forced to work by [REDACTED] abuse or threatened abuse of the law or legal process. *Id.* at 6-7. These contentions lack merit.

First, the record does not show that [REDACTED] abused or threatened to abuse the law or the legal process as a means to force the petitioner to work for the company, as contemplated by ORS section 163.263(1)(a). To the extent that [REDACTED] abused the law by illegally hiring unauthorized workers and by subjecting them to health and safety violations, the evidence does not show that these illegal practices were employed to secure the petitioner's labor.

Second, the record does not show that [REDACTED] forced the petitioner to work by instilling in him a fear that the company would withhold from him the necessities of life, as contemplated by ORS section 163.263(1)(e). The petitioner claims that his supervisors told him that if he quit "they would see to it that [he] didn't find a job anywhere else." *Statement of [REDACTED]* However, the evidence does not show that these threats instilled in the petitioner a fear that [REDACTED] would withhold lodging, food, clothing, or other necessities from him, such that he felt forced to work for the company.

Third, the evidence does not show that the petitioner was forced to work for [REDACTED] by the use or threat of: (1) physical restraint; (2) physical injury; or (3) coercion through law or the legal process, as required under federal law. *See Kozminski*, 487 U.S. at 952. Specifically, the petitioner describes the poor working conditions at [REDACTED] that caused harm to his hands, feet and eyes and two accidents that occurred at work, but he does not contend that Del Monte officials forced him to work by physically restraining or injuring him, or threatening him with these harms. Additionally, the petitioner expressed fear of the consequences of deportation to Guatemala, but the record does not show that [REDACTED] officials ever threatened to report him to immigration law enforcement authorities or otherwise used or threatened to use the legal process to force him into servitude.

Conclusion

Because the petitioner did not meet his burden of showing that he is the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act, he necessarily failed to meet the remaining eligibility requirements for U nonimmigrant status. *See* section 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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 dismissed.