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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



814

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **FEB 25 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:

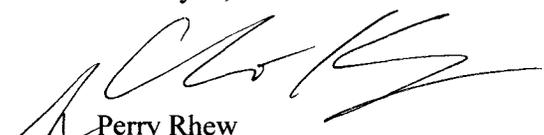


INSTRUCTIONS:

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 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 was not the victim of a qualifying crime or criminal activity and he, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief.

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[.]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 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 petitioner is a native and citizen of Mexico who states that he last entered the United States in 1989. The petitioner submitted an asylum application in July 2002, and he was placed into removal proceedings when his asylum application was referred to the Los Angeles, California Immigration Court. The petitioner remains in proceedings before the Los Angeles Immigration Court and his next hearing date is scheduled for May 13, 2011.

The petitioner filed the instant Form I-918 U petition on November 25, 2008. On November 6, 2009, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he suffered substantial physical and mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 petition.

The Criminal Activity of Which the Petitioner Claims to be a Victim

In his March 17, 2006 affidavit that was submitted with the initial Form I-918 U petition filing, the petitioner averred that in approximately January 1997, he sought the services of a notario, [REDACTED] about legalizing his status in the United States. The petitioner stated that [REDACTED] advised him that he was eligible for lawful permanent residence status, so he retained [REDACTED] for a fee of \$1,500. The petitioner stated that in approximately April 1997, he received an interview notice for an asylum interview and asked [REDACTED] why he received such notice. According to the petitioner, [REDACTED] told him that it was part of the process for obtaining lawful permanent resident status and advised him to attend the interview. The petitioner stated that he went to interview by himself and shortly thereafter, he received a notice to appear in immigrant court. The petitioner recounted that he showed the notice to [REDACTED] who assured him that his appearance before the immigration court was part of the permanent residency process, and he referred the petitioner to another attorney. The petitioner stated that he continued to seek advice from [REDACTED] until 2005 when he found out that [REDACTED] was not an attorney. The petitioner averred that he was the victim of “notario” fraud and misled into believing that he could become a lawful permanent resident.

When filing his Form I-918 U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that was prepared by [REDACTED] Los Angeles, California. The criminal acts that were indicated at Part 3.1 of the form were perjury and “P.C. 487(a).” Part 3.3 of the form listed the statutory citations of the crimes as California Penal Code (C.P.C) §§ 118 (perjury) and 487(c)(grand theft).¹ At Part 3.5 of the form, which provides for a brief description of the criminal activity, [REDACTED] stated that that [REDACTED] committed grand theft and perjury by taking the petitioner’s money under false pretenses and filing false statements under penalty of perjury. Regarding any known injuries to the petitioner, [REDACTED] indicated at Part 3.6 that as a result of [REDACTED] acts, the petitioner was placed into removal proceedings, which threatened to separate him from his family.

In his denial decision, the director acknowledged that the petitioner was the victim of grand theft, but concluded that grand theft was not a crime enumerated at section 101(a)(15)(U)(iii) of the Act. The director also concluded that the petitioner was not the victim of perjury because the evidence failed to show that Ramos committed perjury to either avoid or frustrate efforts to bring himself to justice, or as a means to abuse, exploit, or exert undue control over the petitioner through the manipulation of the legal system.

On appeal, counsel maintains that the law enforcement certification (Form I-918 Supplement B) submitted on the petitioner’s behalf indicated that the petitioner was the victim of perjury and grand

¹ [REDACTED] indicated the criminal activity as C.P.C. § 487(a) at Part 3.1, but provided the statutory citation for the crime as C.P.C. § 487(c) at Part 3.3. C.P.C. § 487(a) provides that grand theft occurs “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars(\$950)” C.P.C. § 487(c) provides that grand theft occurs “when the property is taken from the person of another.”

theft, and that █████ committed perjury in furtherance of the separate crime of grand theft. Counsel claims that █████ committed perjury as a means to further his abuse and control over the petitioner, and that the petitioner has established all of the eligibility criteria at section 101(a)(15)(U)(i) of the Act.

Preliminarily, we note that counsel does not dispute the director's conclusion that grand theft is not a qualifying crime. Instead, counsel argues that █████ committed perjury, which is a qualifying crime, so that the petitioner would continue to need and rely on him for legal representation throughout his removal proceedings. Counsel maintains that the two crimes of grand theft and perjury are, therefore, intertwined.

Grand theft is not a qualifying crime enumerated 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). The petitioner has not provided any evidence that grand theft under C.P.C. §§ 487(a) or (c) is substantially similar to any of the statutorily enumerated crimes, or that it is intertwined with the qualifying crime of perjury in this manner.

Under the California Penal Code, perjury is defined as follows:

(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.

C.P.C. § 118 (West 2011)

The record in this case indicates that █████ may have committed perjury under C.P.C. § 118 when he completed and signed the petitioner's asylum application under penalty of perjury knowing it to contain material and false information. However, to establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must also demonstrate that █████

committed perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his 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 demonstrates that the petitioner was harmed by [REDACTED] and that he was the victim of notario fraud committed by [REDACTED]. The evidence does not demonstrate, however, that [REDACTED] committed perjury to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or that he committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system.

Apart from [REDACTED] filing of the asylum application, the relevant evidence does not indicate that any of [REDACTED] subsequent dealings with the petitioner involved perjury. The record shows that [REDACTED] filed the frivolous asylum application shortly after his first meeting with the petitioner and, thus, 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 [REDACTED], the exploitation resulted from notario fraud and [REDACTED] subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that [REDACTED] perjury offense was accomplished, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if his victimization was established, however, the record does not show that he suffered substantial physical or mental abuse as a result.

In his January 8, 2008 statement that was prepared in response to the director's RFE, the petitioner stated that the loss he has suffered from being placed into removal proceedings is more than financial because he is in danger of losing his family and life in the United States if he is removed to Mexico. The petitioner stated further that he has suffered from anxiety and depression since being placed in removal proceedings because he is afraid for his family's and children's future. The petitioner asserted that the United States has been his home since the age of 15 and he has constant nightmares about being removed from this county.

As supporting evidence, the petitioner submitted a psychological evaluation, dated November 24, 2008, from [REDACTED]. The report indicates that [REDACTED] assessed the petitioner for five hours on November 6, 2008, and she diagnosed the petitioner with multiple symptoms of anxiety and depression arising from his "immigration case." [REDACTED] recommended short-term cognitive

behavioral therapy to help him develop coping skills for his anxiety. The record contains no evidence that the petitioner followed-up on [REDACTED] recommendations.

We do not discount the petitioner's anguish over his possible removal from the United States. While he recounts that he has suffered from nightmares, worry, and depression, he has not provided any further information that would indicate that any abuse he suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). The petitioner has provided no probative details of the effects of [REDACTED] perjury on his daily life in the intervening 14 years since he sought [REDACTED] counsel. The record also contains no other evidence regarding any physical or mental abuse suffered by the petitioner as a result of the reported offenses of perjury and grand theft.

Conclusion

The petitioner has not demonstrated that he was the victim of qualifying criminal activity, and he consequently fails to meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

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. The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.