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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
and Immigration
Services**



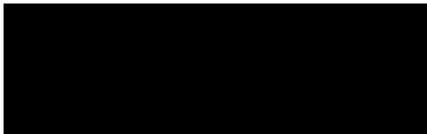
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Date: **JUN 03 2011** Office: VERMONT SERVICE CENTER FILE:

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, 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) and a brief, 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 Armenia. On August 14, 2009, the petitioner filed the instant Form I-918 U petition. On February 4, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On June 30, 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.

The director denied the petition because the record did not establish that the grand theft and fraud to which the petitioner was subjected were substantially similar to extortion or any other qualifying criminal activity and because the petitioner suffered financial loss, not substantial physical or mental abuse as a result of the crimes. On appeal, counsel asserts that the crimes in question qualify as crimes which are substantially similar to extortion, perjury and subornation of perjury; and the harm suffered by the petitioner is primarily mental abuse and psychological harm.

The Claimed Criminal Activity

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED]

[REDACTED] At Part 3.1, the certifying official indicated that the petitioner was the victim of related crimes. At Part 3.3, the certifying official cited California Penal Code (CPC) 487.1¹ (grand theft) and “Immigration Fraud” as the criminal activity. Although the certifying official indicated at Part 3.1 that the petitioner was the victim of related crimes, he did not indicate to which crimes the activity was related and he did not provide a statutory citation for any crime at Part 3.3 except grand theft.

At Part 3.5, the certifying official described the criminal activity being investigated as a large immigration fraud/grand theft case, indicating that the suspect (R-Z-²) accepted large sums of money from victims and promised them legal immigration status while submitting improper or fraudulent forms to U.S. Citizenship and Immigration Services (USCIS). There is no other documentation submitted or referred to by the certifying official. As the record does not contain clarifying information regarding the section of law, if any, that “Immigration Fraud” falls under, the only crime that shall be assessed in this proceeding is the crime of grand theft.

The record contains a July 30, 2009 and an April 27, 2010 affidavit that recounts the petitioner’s interactions with R-Z-. The petitioner claimed that she had been the victim of perjury and/or subornation of perjury because R-Z- filed forged and fraudulent forms with USCIS without her knowledge as to what was being filed, either by forging her signature or by having her sign blank or unknown forms, as she did not understand much English at the time, and telling her that it would help her get her and her family’s “green cards.” She stated that R-Z- obtained credit cards under the petitioner’s name by stealing the petitioner’s identity and proceeded to add herself as an authorized user without the petitioner’s permission. She stated that R-Z- threatened to report her to immigration authorities for deportation and to no longer help her with her immigration status. She stated that by doing so, R-Z- was able to extort more money from her by continuing to charge her credit cards as she wished until her arrest.

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, subornation of perjury and extortion.

¹ The certifying official listed section “487.1 Grand Theft” on the Form I-918 Supplement B, Part 3.3 as the statutory citation for the criminal activity investigated or prosecuted. However, that citation appears to be a typographical error, as grand theft is defined at CPC § 487(a) – (d).

² Name withheld to protect individual’s identity.

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

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). 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).

As noted above, although counsel claims that the crime of which the petitioner was a victim is substantially similar to the crimes of extortion and perjury, which are listed at section 101(a)(15)(U)(iii) of the Act, the certifying official did not indicate on the Form I-918 Supplement B that those crimes were investigated or prosecuted. The certifying official's reference to related crimes at Part 3.1 of the Form I-918 Supplement B is equivocal, and his narrative at Part 3.5 does not make the required nexus between the crime that was certified and prosecuted (grand theft) and the qualifying crimes of extortion or perjury. We, therefore, do not consider the crimes of extortion and 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 R-Z- in the future for such crimes.

Even if the certifying official had indicated at Part 3.1 that the crime of which the petitioner was a victim was similar to extortion and/or perjury, such certification would not have sufficed to meet the petitioner's burden of proof. 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 certifying official believed that the crimes against the petitioner were crimes related to extortion, perjury and subornation of perjury; however, counsel provides no evidentiary support from the certifying official, and his unsupported assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Grand theft under CPC § 487 is the only crime specifically identified on the Form I-918 Supplement B. Under CPC § 487(a), grand theft occurs when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950), . . . (West 2011) Grand theft is not substantially similar to extortion. Extortion is defined at CPC § 518 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

Extortion under CPC § 518 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 CPC § 487(a) 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).

Counsel has also failed to show that grand theft is substantially similar to perjury or subornation of perjury under California law.

Perjury under CPC § 118 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)

California defines subornation of perjury 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.” CPC § 127 (West 2011).

Grand theft under C.P.C. § 487 is a financial crime that contains no element of false statements under oath, which are requisite to perjury crimes under CPC §§ 118, 127. Accordingly, the

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.”

crime of grand theft is not similar to the qualifying crime of perjury (or solicitation to commit perjury) because the nature and elements of the crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

Rather than engaging in the requisite analysis of the nature and statutory elements of grand theft and extortion and perjury or any other qualifying crime, counsel asserts that the factual circumstances of what happened to the petitioner indicate that she was extorted by R-Z- and that she suffered emotional distress as a result. While we do not discount the harm the petitioner experienced, counsel has not established on appeal that the petitioner was the victim of extortion, perjury, or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Remaining Eligibility Criteria

The petitioner's supporting documentation establishes R-Z-'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 R-Z- and that she possessed some information about R-Z-'s fraudulent business practices and theft. While the petitioner's assistance in these legal actions against R-Z- may have been valuable and was laudable, her own victimization has not been established, as discussed above. 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.