

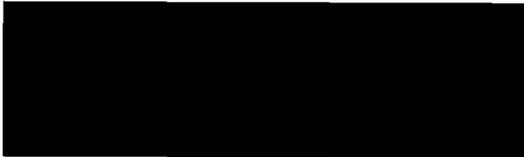
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



814

DATE: JUN 10 2011 Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 

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) 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 for failure to establish that the petitioner was the victim of a qualifying crime. 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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), also requires the submission of a certified law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification) with a Form I-918 U petition.

The regulation at 8 C.F.R. § 214.14(a) further states, in pertinent part:

(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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (law enforcement certification). 8 C.F.R. § 214.14(c)(4). 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 first entered the United States without inspection in 1989. In 2000, a Form I-589, Application for Asylum and Withholding of Removal, was filed on the petitioner's behalf, which was referred to the Immigration Court in Los Angeles, California.¹ In February 2007, the petitioner filed an application for interim relief pending implementation of the U nonimmigrant visa provisions. On March 26, 2007, the director denied the petitioner's application due to insufficient evidence that he suffered substantial abuse as a result of having been the victim of the claimed criminal activity. The petitioner filed the instant Form I-918 on March 10, 2009. The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the offense perpetrated against the petitioner was qualifying criminal activity and that he suffered

¹ The petitioner remains in proceedings and his next hearing is scheduled for June 20, 2011.

substantial physical or mental abuse as a result of such victimization. Counsel timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed.

On appeal, counsel maintains that the immigration fraud perpetrated against the petitioner made him the victim of perjury and grand theft and that the petitioner suffered substantial mental abuse because he and his family face possible deportation from the United States.

The Claimed Criminal Activity

In his 2005 and 2010 declarations, the petitioner recounted that he first contacted a business called [REDACTED] April 2002 for assistance in obtaining lawful permanent residency in the United States. The petitioner initially paid [REDACTED] \$3,700 and later paid an additional \$2,800. The petitioner recalled that he also paid another \$1,000 for interpreters at interviews and hearings. According to the petitioner, the owner of [REDACTED] assured him that he could get a "green card." The petitioner recalled signing some documents, but states he was never told that an asylum application was filed on his behalf. The petitioner explained that [REDACTED] told him that he would have an interview to obtain a work permit, but at the interview, the petitioner realized that [REDACTED] had filed an asylum application and he then had hearings before an immigration judge where a lawyer associated with [REDACTED] represented him. When the petitioner discovered that [REDACTED] had defrauded him, he asked for his documents back, but [REDACTED] threatened to have him deported if he did not cooperate with [REDACTED]. The petitioner stated that after his experiences with [REDACTED] he began drinking and smoking, had difficulty sleeping and became severely distressed at the prospect of possible deportation.

The petitioner submitted a law enforcement certification signed by an investigator with the Orange County California District Attorney's Office. The certification lists the criminal activity investigated or prosecuted as: California Penal Code (CPC) sections 487 (grand theft) and 664/127 (procuring another to commit perjury). The certification partially summarizes the petitioner's dealings with [REDACTED] and describes the injury to the petitioner as, "Loss of the fees paid. Ability to change legalize [sic] in the United States was jeopardized."

Grand Theft Under C.P.C. § 487 is Not a Qualifying Crime

The crime of grand theft is not a qualifying crime listed 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).

Under California law, grand theft is committed "when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950) . . ." Cal. Penal Code § 487 (West 2011). On appeal, counsel asserts that "Grand Theft should be held to be a similar activity because it is part of a continuing fraud against this Applicant." Counsel fails to demonstrate that the nature and

elements of grand theft under CPC § 487 are substantially similar to the nature and elements of perjury under CPC §§ 118 and 127. In addition, counsel does not claim that grand theft under California law is substantially similar to any of the other crimes listed in section 101(a)(15)(U)(iii) of the Act. Accordingly, grand theft under CPC § 487 is not a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The Petitioner was Not a Victim of Perjury

Under CPC § 127, 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). 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)

To establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that La Guadalupana procured him to commit perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise 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 relevant evidence does not demonstrate that La Guadalupana suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring it to justice for other criminal activity. The record indicates that the Orange County District Attorney’s Office filed a criminal complaint against [REDACTED] in 2003, over three years after the petitioner signed his asylum application. As [REDACTED] was charged with grand theft through immigration fraud

years after the petitioner signed his asylum application, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application avoided or frustrated the district attorney's prosecution efforts, as the crime would only have provided further evidence of [REDACTED]'s malfeasance.

Counsel has also not established that [REDACTED] committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that [REDACTED] filed the asylum application shortly after being retained by 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 fraud, not from further perjury under C.P.C. § 118. Accordingly, the record does not demonstrate that [REDACTED] suborned the petitioner's perjury, in principal part, as a means to further its exploitation, abuse or undue control over the petitioner by its 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)(i) of the Act.

Conclusion

The petitioner has not demonstrated that he was the victim of qualifying criminal activity, as defined at section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting 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. Consequently, the appeal will be dismissed.

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