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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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§ 14

FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 21 2011

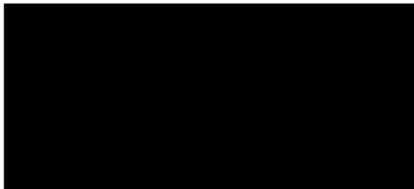
IN RE:

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 on the basis of his determination that the petitioner had 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, counsel submits a brief reasserting the petitioner's eligibility and additional documentation.

*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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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.

#### *Pertinent Facts and Procedural History*

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala. He entered the United States in 2001 without inspection. On June 12, 2007, the petitioner was arrested along with other undocumented workers at a plant in Portland, Oregon. The petitioner was served with a Notice to Appear in removal proceedings before the Portland, Oregon Immigration Court and his next hearing is scheduled for April 19, 2011.

The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on August 7, 2009. On March 24, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the RFE, the director denied the petition on November 10, 2010. Counsel timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

#### *Victim of Qualifying Crime or Criminal Activity*

The first issue before the AAO on appeal is whether the petitioner has demonstrated that he was a victim of a qualifying crime or criminal activity. The Form I-918, Supplement B (the "law enforcement certification"), which was signed by Deputy Sheriff [REDACTED] (the "certifying

official”)<sup>1</sup> of the Multnomah County, Oregon Sheriff’s Office initially on August 5, 2009 and again on June 1, 2010 indicates that the petitioner was the victim of criminal activity involving, or similar to, perjury, unlawful criminal restraint, forced labor, trafficking, involuntary servitude, and the conspiracy and attempt to commit any of those crimes. At part 3, item 3 of the law enforcement certification, the certifying official stated the following sections of the Oregon Revised Statutes as the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted:

Perjury under section 162.065 of the Oregon Revised Statutes:

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.

Involuntary servitude under section 163.263 of the Oregon Revised Statutes:

(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.

Trafficking under section 163.266 of the Oregon Revised Statutes:

(1) A person commits the crime of trafficking in persons if the person knowingly:

(a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or

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<sup>1</sup> A letter, dated March 8, 2010, signed by [REDACTED] Oregon indicates that the certifying official is working under a grant from the Bureau of Justice Assistance and is authorized by the Sheriff to sign Form I-918 Supplement B Forms.

(b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.26.

The certifying official submitted a Multnomah County Sheriff's Office form noting that he had interviewed the petitioner on July 20, 2009, to investigate the possibility that the petitioner was a victim of human trafficking. In a letter accompanying the form, the certifying official stated that the petitioner applied for a job at [REDACTED] in Portland, Oregon in June 2007 and that he provided the person writing his application, a fake Oregon identification card and a false social security card number. The certifying official also noted that the petitioner reported that during the week he worked at [REDACTED] the workers were threatened with being fired, the working conditions were horrible, and the workers were afraid to ask for better working conditions because of the threat of being fired.

In the petitioner's July 27, 2009 self-affidavit, the petitioner stated that he moved to Oregon from Iowa after he heard that it was easier to find work year round in Oregon. The petitioner indicated that he went to American Staffing in June 2007 because he heard that they accepted fake documents and that he began working for Del Monte two days after he applied. The petitioner stated that he presented fake papers and the documents he presented were obviously false. The petitioner also indicated his shifts were 11 to 12 hours long and that he was only given one 15-minute break during this time and that he was too scared to ask for more breaks as he believed he would be fired. The petitioner also stated that the supervisors would yell at the workers to move faster and the line supervisor would tell the workers that if they did not hurry, they would be fired for having bad papers. The petitioner noted that the people who had good papers seemed to be treated differently.

In a second self-affidavit, dated June 4, 2010, the petitioner repeated many of his previous statements and added that his employers knew he was not "legal" and that is why they took advantage of him. The petitioner also noted that he does not speak English or Spanish fluently. The petitioner indicated that it "seemed like [REDACTED] wanted to have illegal workers because they knew illegal workers would be too scared to stand up for [themselves] against all of their illegal conduct." The petitioner stated that the illegal conditions and work practices at [REDACTED] caused him many emotional and mental problems and the constant threats and harassment made him stressed out and anxious.

In a May 24, 2010 psychological evaluation of the petitioner, prepared by [REDACTED], licensed clinical social worker, the petitioner's description of his experiences at [REDACTED] to [REDACTED] largely mirrors those contained in his affidavits. [REDACTED] stated that the petitioner felt trapped whether he stayed at [REDACTED] plant and continued working under the deplorable working conditions or was returned to Guatemala where he was certain gang members would find and murder him. [REDACTED] opined that the petitioner met the criteria for post traumatic stress disorder which showed no signs of abating. [REDACTED] noted that the petitioner reported he experienced muscular pain in his hands and forearms.

The record before the director also included a May 12, 2010 handwritten letter written by M-F-<sup>2</sup> who indicated that she had worked at the Del Monte plant for five years and [REDACTED] was not a good place to work because of the working conditions.

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

On appeal, counsel claims that the petitioner was the direct victim of perjury, involuntary servitude, and trafficking.

Counsel also submits several documents relating to an investigation of, and class action lawsuit against, [REDACTED]. In an October 15, 2007 news release, the Oregon Department of Consumer and Business Services stated that the Oregon Occupational Safety and Health Division intended to fine [REDACTED] and an affiliated staffing agency \$28,700 and cited them for multiple safety and health violations as a result of an inquiry into working conditions at the food packaging plant at which the petitioner worked. The petitioner also submitted a June 8, 2007 affidavit from [REDACTED] a special agent with the U.S. Immigration and Customs Enforcement Office of Investigations, which was filed before the U.S. District Court for the District of Oregon in order to obtain a search warrant of the [REDACTED] plant where the petitioner was employed. In his affidavit, [REDACTED] describes in detail his investigation into [REDACTED]'s employment of undocumented workers through the services of American Staffing. The record also includes articles on the investigation of worker-safety at the [REDACTED] plant and the June 12, 2007 immigration raid at the plant, as well as articles on human trafficking and involuntary servitude.

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 U.S.C. § 1184(p)(1); 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).

### *Perjury*

Counsel claims that the petitioner is the victim of perjury because American Staffing falsely swore to his immigration status when completing his employment forms. However, the applicant states that he procured work with American Staffing by providing them with his fake Oregon identification card and a fake social security card for his employment forms. Because he also is culpable of misrepresenting his authorization to work, the petitioner cannot be

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<sup>2</sup> Name withheld to protect the individual's identity.

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.”). Accordingly, the petitioner does not meet the definition of the victim of perjury at 8 C.F.R. § 214.14(a)(14)(ii).

### *Involuntary Servitude*

On appeal, counsel asserts that the petitioner was the victim of involuntary servitude because [REDACTED] through its managers: forced the petitioner to perform services through actual and threatened abuse of the law and legal processes through intentional illegal hiring, violations of workplace safety and wage and hour laws; by threats to fire him for asserting basic rights; by threatening and refusing to provide life necessities; and by implying he would be faced with deportation, if he did not comply with the illegal conditions of the job.

Again, the record does not support counsel’s claims. There is no evidence [REDACTED] forced or attempted to force the petitioner to work by abusing or threatening to abuse the law or legal process. Contrary to counsel’s assertions on appeal, the petitioner himself never stated that anyone at [REDACTED] threatened him with arrest and deportation. The petitioner recounted that the line-supervisor yelled at the workers and would tell them that he they did not hurry they could be fired for having bad papers. The petitioner does not describe any incident where [REDACTED] employees specifically threatened him with arrest and deportation. The record does not show that in the petitioner’s case, [REDACTED] threat of possible termination of the petitioner’s employment and poor working conditions were equivalent to instilling a fear in the petitioner that he would be deprived of life necessities such that he was a victim of involuntary servitude under Oregon law.

### *Trafficking*

The record also does not support counsel’s claim on appeal that the petitioner was the victim of trafficking because [REDACTED] obtained the petitioner’s services knowing he would be subjected workplace conditions that would include involuntary servitude. As set forth previously, a showing of involuntary servitude is necessary in order to establish victimization under the Oregon trafficking statute. Or. Rev. Stat. Ann. § 163.266 (2009). As the petitioner has not made that demonstration, he has not established that he was the victim of trafficking.

### *Perjury, Involuntary Servitude, Trafficking*

The petitioner’s supporting documentation, including [REDACTED] affidavit, the information regarding the class action lawsuit against [REDACTED] and the information regarding fines leveled against [REDACTED] for workplace violations, establish [REDACTED] illegal practices and mistreatment of workers during the one-week the petitioner was employed with the company. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that he was himself subjected to perjury, involuntary servitude, or trafficking.

The record does show that the petitioner was helpful to the certifying agency in its investigation of

██████████ and that he possessed some information about ██████████ mistreatment of its workers and unsafe facilities. While the petitioner's assistance in these legal actions against ██████████ may have been valuable and was laudable, his own victimization has not been established. In his letter, ██████████, the certifying official, does not specifically identify any criminal activity of which the petitioner was a victim. Rather, he states that the petitioner was afraid of being fired when he really needed the job. The petitioner also states that he worked in unsafe conditions and was told on several occasions that he could be fired. The petitioner's statements do not, however, indicate that during his employment at the ██████████ facility he was subjected to trafficking, or involuntary servitude, or that he was the victim of perjury or any attempt or conspiracy to commit any of these qualifying crimes as stated on the law enforcement certification.

The petitioner has not established that he was the victim of a qualifying crime or criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act.

#### *Remaining Eligibility Criteria*

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

#### *Conclusion*

As set forth above, the petitioner has failed to establish that he was the victim of qualifying criminal activity or that he meets any of the eligibility requirements for U nonimmigrant classification at section 101(a)(15)(U)(i)(I) – (IV) of the Act, and his 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.