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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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Date: **MAY 16 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 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 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 Notice of Appeal (Form I-290B) 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 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 U.S. Citizenship and Immigration Services (USCIS). Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i). As stated earlier, 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).

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 Mexico. In 1989, the petitioner entered the United States without inspection. The petitioner subsequently departed and reentered the United States on a number of occasions without inspection. The petitioner last reentered the United States without inspection in February 2000. On February 7, 2002, the petitioner filed an Application for Asylum and Withholding of Removal (Form I-589). On March 18, 2002, the Form I-589 was referred to an immigration judge and the petitioner was placed into immigration proceedings. On February 19,

2004, the immigration judge permitted the petitioner to withdraw his applications for asylum, withholding of removal and for protection under the Convention Against Torture, denied the petitioner's application for cancellation of removal and granted the petitioner voluntary departure until April 19, 2004. The petitioner filed an appeal with the Board of Immigration Appeals (BIA). On September 29, 2005, the BIA found the petitioner ineligible for cancellation of removal, dismissed the appeal and granted the petitioner 60 days of voluntary departure. The petitioner requested a reissuance of the BIA's decision. On December 21, 2007, the BIA denied the petitioner's request to reissue the decision. The petitioner filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On June 9, 2010, the Ninth Circuit remanded the petitioner's case to the BIA for reissuance of the decision. On January 11, 2011, the BIA reissued the decision against the petitioner granting him 60 days of voluntary departure.

On July 15, 2009, the petitioner filed the instant Form I-918 U petition. On January 22, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On June 28, 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.

On appeal, counsel asserts that: the director abused his discretion; extortion and perjury are qualifying criminal activities as evident in the documents submitted with the Form I-918 U petition; the evidence of record demonstrates how both of these crimes have affected the petitioner; the petitioner has demonstrated that he is a victim of a qualifying criminal activity; the perpetrator of the crime extorted money from the petitioner because if he did not pay the perpetrator would have called immigration to have the petitioner deported; the petitioner is a victim of perjury and has suffered substantial mental abuse based on his victimization; the perjury occurred and the perpetrator furthered his abuse of the petitioner by having undue control over the petitioner and by manipulating the legal system by filing frivolous and fraudulent asylum applications; the perpetrator manipulated the legal system to obtain a work permit, driver's license and social security number when in reality the petitioner did not qualify for political asylum; the perpetrator benefitted from these activities since the petitioner had to pay for the services; and the crime of fraud is related to the perjury and extortion and is similar to these crimes even though it is not mentioned in the list of qualifying crimes.

The Claimed Criminal Activity

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED] (certifying official) of the Orange County District Attorney's Office. At Part 3.1, the certifying official indicated that the petitioner was the victim of criminal activity involving, or similar to, extortion and perjury. The certifying official provided the statutory citations for the criminal activity at Part 3.3 as California Penal Code sections 487.1 (grand theft); 518 (extortion); 664 (attempt to commit a crime); and 127 (subornation of perjury). At Parts 3.5 and 3.6, the certifying official did not describe either the criminal activity being investigated or prosecuted, or any known or documented injury to the petitioner.

In response to the director's RFE the petitioner submitted his April 1, 2010 declaration in which he stated that he met R-F-¹ in 2002 when he told him that he was an attorney, that he had many immigration cases and that he was going to help him obtain his residency. He stated that R-F- promised him legal residency. He stated that he paid R-F- approximately \$8,800 for the whole family and gave him a deposit of \$2,000 in order to start work on the immigration process. He stated that, before R-F- was arrested, he would go to the office every two weeks to make payments of \$200 to \$500. He stated that his wife would ask why he was paying the money and one of R-F-'s son's secretaries would get upset with him. He stated that, on many occasions, when he would tell one of R-F-'s sons something about the payments, he would tell him that he did not want the bill to accumulate and if he did not pay he was not going to represent him and he would be deported. He stated that the threats became more intense when the police were about to arrest R-F-, mentioning that if he did not pay he was going to be deported. He stated that R-F- would always threaten him by telling him that he could easily have him deported by turning all of his information into immigration. He stated that he found out that R-F- had lied to him and had presented an application for political asylum when he attended the asylum interview. He stated that he was informed that since he was from Mexico he did not qualify for asylum and his application was denied. He stated that R-F- had not permitted him to review the asylum application at the time he signed it and he was not given a copy of the documentation submitted on his behalf. He stated that he feared asking R-F- questions because R-F- had previously intimidated him by saying he had to continue the papers or he would be deported. He stated that when his case was referred to the immigration court R-F- continued to lie to him by saying that it was a part of the process and that everything was okay and that he had to continue to make his payments. He stated that he had to get attorneys involved which cost approximately \$17,000. He stated that in March 2003 he saw that R-F- had been arrested and he realized that R-F- was not an attorney. He stated that he had gone to R-F- because other people had recommended him. He stated that he did not know that he was signing an application for political asylum and R-F- wrote a lot of things that were not true in order to be able to present the application for asylum and, as such he gave false testimony or perjury.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted articles from the Los Angeles Times, the Orange County Register and the National Notary Association about La Guadalupana, R-F-'s business, as well as a Press Release from the Orange County District Attorney's Office, which described the indictment of the owners of La Guadalupana.

The petitioner also submitted an Orange County docket report which lists the charges brought against R-F-.

The Petitioner has not Established that he was the Victim of Qualifying Criminal Activity

Although the crimes of extortion and perjury are listed at section 101(a)(15)(U)(iii) of the Act as qualifying crimes and the certifying official indicated at Part 3.1 and 3.3 of the Form I-918 Supplement B that the petitioner was a victim of those two crimes (as well as grand theft), he failed

¹ Name withheld to protect individual's identity.

to provide any statements describing the criminal activity being investigated or prosecuted and the petitioner's involvement in the investigation or prosecution, as well as the petitioner's victimization and injury from, such criminal activity. The corresponding portions of the Form I-918 Supplement B (Part 3.5-6) are blank. The record also does not contain supporting documentation that describes the specific criminal activity perpetrated against the petitioner, the investigation or prosecution of such criminal activity and the petitioner's involvement therein, as well as his victimization and injury from the criminal activity such as police reports, or a letter from the certifying agency. Without such information from the certifying agency, the Form I-918 Supplement B is insufficient to establish that the petitioner was the victim of qualifying criminal activity.

The remaining, relevant evidence does not establish that qualifying criminal activity was committed against the petitioner, that the qualifying criminal activity was investigated or prosecuted, or that the petitioner suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The newspaper articles from the Los Angeles Times, the Orange County Register and the National Notary Association, as well as the Press Release from the Orange County District Attorney's Office show that the owners of La Guadalupana were indicted for grand theft and conspiracy, but the documents do not name the petitioner or otherwise establish that he was a client of La Guadalupana and a victim of extortion or perjury due to the company's fraudulent schemes.

The Orange County docket report show that R-F- was indicted for multiple counts of grand theft and conspiracy to cheat and defraud a person of property or to obtain money or property by false pretenses, but the report does not name the petitioner, otherwise establish that he was a client of La Guadalupana, or demonstrate that he was a victim of extortion or perjury due to the company's fraudulent schemes. The petitioner, therefore, has not met the definition of "victim of qualifying crime or criminal activity" at 8 C.F.R. § 214.14(a)(14) and cannot establish his eligibility under section 101(a)(15)(U) of the Act.

Remaining Eligibility Criteria

The petitioner's supporting documentation establishes R-F-'s fraudulent dealings, inadequate legal advice and theft. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that he was himself subjected to perjury, extortion or any other qualifying criminal activity.

The record indicates that the petitioner was helpful to the certifying agency in its investigation of R-F- and that he possessed some information about R-F-. While the petitioner's assistance was laudable, his own victimization has not been established. The certifying official does not specifically describe any qualifying criminal activity of which the petitioner was a victim or the harm that the petitioner suffered as a result of the commission of any qualifying criminal activity.

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 subsections 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. The petition remains denied.