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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

**PUBLIC COPY**

D14



Date: NOV 02 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 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 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 at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a Notice of Appeal (Form I-290B), copies of documentation previously provided and a letter, 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 Mexico. On March 18, 2010, the petitioner filed the instant Form I-918 U petition. On July 13, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On November 10, 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 crimes for which the perpetrator was convicted - loan sharking and tax misrepresentation - were substantially similar to perjury or any other qualifying criminal activity, the director noted further that the crime of perjury, which the certifying official stated was still being investigated, caused the petitioner to suffer financial loss, not substantial physical or mental abuse. On appeal, counsel asserts that victimization need not be direct, as direct or proximate harm from the perjury is not required; and it can be reasonably inferred that the perpetrator’s acts of perjury were motivated at least as

much to avoid waking criminal authorities to the illegal practices by which the income was obtained as the desire to pay less tax.

### *The Claimed Criminal Activity*

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED] Office of Napa County, California. At Part 3.1, which lists the crimes, the certifying official indicated that the petitioner was the victim of perjury, related crimes and other: loan sharking and tax misrepresentation. At Part 3.3, which requires the statutory citation for the crimes, the certifying official cited California Civil Code (CCC) 1916.3 (rights of person paying illegal interest-loan sharking) 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 any other citations to which the activity was related and he did not provide a statutory citation for any other crime at Part 3.3 except for loan sharking.

At Part 3.5, the certifying official described the criminal activity being investigated as a loan sharking scheme by A\_T\_<sup>1</sup> which deprived the petitioner of \$9,330 as a result of usurious practices and that, at least partly in cover-up of the loan sharking, A\_T\_ appears to have committed misrepresentations in her filings of income tax returns with the Internal Revenue Service (IRS) and the California Franchise Tax Board (CFTB). The certifying officer indicated that the investigation of possible perjury is ongoing. At Part 3.6, the certifying official indicated that the known or documented injury to the petitioner was that she was deprived of many thousands of dollars, a very substantial part of her annual income and, as a result, the court found that the victims had suffered emotional hardship. At Part 4.5 the certifying official indicated that the petitioner cooperated completely with the investigation and the prosecution of the loan sharking case against A\_T\_, giving oral statements both in and out of court about the usurious agreement and providing documentary evidence which supported the charges. The certifying official indicated that the complaints by the petitioner and others precipitated the investigation which led to finding possible misrepresentations on tax returns by A\_T\_ and that one of the motives of the apparent misrepresentations may have been to evade discovery of A\_T\_'s loan sharking business.

The record contains a March 8, 2010 affidavit that recounts the petitioner's interactions with A\_T\_. The petitioner states that A\_T\_ loaned her money on several occasions and charged interest rates ranging from eight percent to 12 percent. She states that A\_T\_ harassed her about her debts when attempting to collect the debts. She states that A\_T\_ was arrested for loan sharking and that she has also been informed that A\_T\_ committed tax misrepresentation and perjury.

The record contains court documentation reflecting that A\_T\_ was charged with charging usurious interest rates, called loan sharking, in violation of CCC § 1916.3.

As noted previously, the director found that the petitioner was not a victim of qualifying criminal activity as defined at section 101(a)(15)(U)(iii) of the Act. The director found that although

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<sup>1</sup> Name withheld to protect individual's identity.

perjury is listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the petitioner had failed to establish that she had been the victim of that crime.

On appeal, counsel claims that the petitioner was the indirect victim and suffered harm as a result of perjury.

*Loan Sharking Under C.C.C. § 1916.3 is Not Substantially Similar to the Qualifying Crime of Perjury and the Petitioner has not Established that she was the Victim of Perjury*

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).

The certifying official indicated on the Form I-918 Supplement B that the crime of perjury was investigated or prosecuted; however, the certifying official's description of the investigation and prosecution does not indicate that the petitioner was a victim of the crime of perjury and was not suborned for perjury. While the certifying official references A\_T\_'s tax misrepresentation and indicates that the crime of perjury is on-going, the certifying official's narrative clearly indicates that the victim of the crime of perjury is not the petitioner but rather the IRS and the CFTB. We, therefore, do not consider that the petitioner was the victim of perjury or that A\_T\_ suborned her to commit perjury.

Even if the narrative of the certifying official had indicated that the petitioner was the victim of 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).

Loan sharking under CCC § 1916.3 is the only cited crime specifically identified on the Form I-918 Supplement B. Under CCC § 1916.3, loan sharking occurs when a person "willfully makes or negotiates, for himself or another, a loan of money . . . and who directly or indirectly charges, contracts for, or receives with respect to any such loan any interest or charge of any nature, the value of which is in excess of that allowed by law . . ." (West 2011). Loan Sharking is not substantially similar to perjury. 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.

Cal Penal Code § 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." Cal. Penal Code § 127 (West 2011).

Loan Sharking under C.C.C. § 1916.3 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 crime of loan sharking 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).

In addition, although the certifying official indicated that an investigation into A\_T\_'s commission of perjury is ongoing, the relevant evidence does not establish that the petitioner was the victim of perjury.

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that A\_T\_ procured her 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 evidence in the record does not demonstrate that A\_T\_ suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring her to justice for other criminal activity. The only evidence of law enforcement action against A\_T\_ is the certifying official's statements on the Form I-918 Supplement B indicating that an investigation of possible perjury is on-going in relation to A\_T\_'s misrepresentations in her filing of income tax returns with the IRS and CFTB. As the certifying official indicates that A\_T\_ is being investigated for tax fraud, there is no reason to believe that A\_T\_ suborned the petitioner to commit perjury.

Counsel has also not established that A\_T\_ committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. While the record shows that the petitioner was exploited by A\_T\_, the exploitation resulted from loan sharking, not from any perjury under CPC §§ 118, 127. Accordingly, we do not find that A\_T\_ suborned the petitioner's perjury, in principal part, as a means to further her exploitation, abuse or undue control over the petitioner by her manipulation of the legal system.

*Remaining Eligibility Criteria*

The petitioner's supporting documentation establishes A\_T\_'s loan sharking activities. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that she was herself subjected to perjury or subornation of perjury.

The record does show that the petitioner was helpful to the certifying agency in its investigation of A\_T\_ and that she possessed some information about A\_T\_'s loan sharking activities. While the petitioner's assistance in these legal actions against A\_T\_ 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.