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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**

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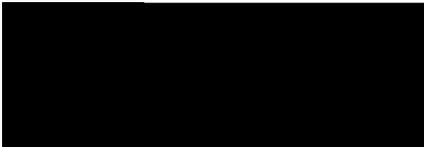
DATE: **NOV 03 2011** Office: VERMONT SERVICE CENTER

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:

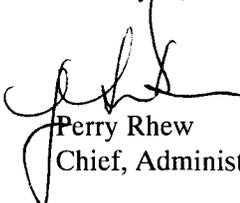


INSTRUCTIONS:

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 petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

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[.]

The regulation at 8 C.F.R. § 214.14(a) defines the following pertinent terms:

(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 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. 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, 8 U.S.C. § 1184(p)(4).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Turkey who last entered the United States on February 27, 2000 as a nonimmigrant visitor. In 2007, the petitioner was served with a Notice to Appear for removal proceedings after a Form I-130, petition for alien relative, filed on his behalf was denied. The petitioner filed the instant Form I-918 U petition on April 10, 2008.¹ On May 7, 2008, the petitioner's removal proceedings were administratively closed due to his pending U petition.

The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Finding the petitioner's response to the RFE insufficient to demonstrate his eligibility, the director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

On appeal, counsel asserts that the petitioner was the victim of criminal possession of a forged instrument and scheme to defraud, which are substantially similar to the qualifying crimes of perjury and obstruction of justice, and which caused the petitioner to suffer substantial mental abuse. Counsel submits a brief and an additional affidavit from the petitioner discussing his inability to attend his father's funeral in Turkey due to his lack of lawful immigration status in the United States.

¹ Prior to the issuance of regulations implementing the U nonimmigrant classification, the petitioner filed three requests for interim relief, which were denied on March 2, 2004; October 25, 2004 and January 18, 2006.

The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional affidavit submitted on appeal fail to overcome the ground for denial and the appeal will be dismissed for the following reasons.

The Criminal Activity of which the Petitioner was the Victim

In his April 28, 2010 affidavit, the petitioner recounted that in 2001 a coworker referred him to ██████████ ██████████ as an immigration attorney who could help him obtain employment authorization. The petitioner stated that he met with ██████████ twice at her office and she told him she would help him get a work permit. The petitioner reported that on July 10, 2002, he was interviewed by someone who appeared to be an immigration officer and his passport was stamped as received. After the interview, ██████████ took his passport, told him she gave it to an officer and that they would retrieve it in approximately one month. In August 2002, the petitioner met ██████████ at a federal government office building in New York City where she spoke to an officer and returned his passport, which contained an approval stamp. ██████████ told the petitioner that his "green card" application had been approved. Shortly thereafter, the petitioner was notified by law enforcement that ██████████ was not an attorney, that his interview and the stamps in his passport were fake and that his immigration application had never been approved. The petitioner recounted that he never recovered the \$15,000 he paid ██████████ and that after he learned of her fraud, his health deteriorated and his professional life suffered.

The petitioner's law enforcement U nonimmigrant status certification (Form I-918 Supplement B) was completed by ██████████ ██████████ Nassau County, New York District Attorney's Office. On the certification at Part 3 regarding the criminal acts, ██████████ stated that the petitioner was the victim of criminal possession of a forged instrument in the second degree under New York Penal Law (NYPL) § 170.25 and he explained that the petitioner was injured by paying \$15,000 to the criminal defendant and waiting two years for a "green card." When describing the petitioner's helpfulness at Part 4 of the certification, ██████████ explained that as a result of the testimony of the petitioner and other victims, the defendant was convicted of criminal possession of a forged instrument in the second degree and scheme to defraud in the first degree under NYPL § 190.65(1)(b).

The Offenses of which the Petitioner was a Victim are Not Qualifying Crimes

On appeal, counsel asserts that the director only considered the petitioner to be a victim of possession of a forged instrument and did not address the petitioner's victimization from the crime of scheme to defraud. We find no error in the director's decision because the law enforcement certification indicates that the petitioner was the victim only of criminal possession of a forged instrument. That crime is also the only one in which the petitioner is specified as a victim in the criminal complaint filed against ██████████ ██████████. The crime of scheme to defraud nonetheless merits discussion because ██████████ description of the petitioner's helpfulness and other relevant evidence indicates that he may have also been the victim of scheme to defraud, even if ██████████ was not ultimately prosecuted for that crime against the petitioner.

However, neither possession of a forged instrument nor scheme to defraud are qualifying crimes 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). The offenses perpetrated against the petitioner are not substantially similar to any of the statutorily enumerated qualifying crimes.

On appeal, counsel asserts that criminal possession of a forged instrument and scheme to defraud are substantially similar to the qualifying crime of obstruction of justice. Under New York penal law:

A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10.^[2]

N.Y. Penal Law § 170.25 (McKinney 2011).

New York penal law defines scheme to defraud as, in pertinent part:

A person is guilty of a scheme to defraud in the first degree when he or she: . . . (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons

N.Y. Penal Law § 190.65(1) (McKinney 2011).

Counsel claims that these crimes are substantially similar to the federal offense of obstruction of justice in the form of obstruction of proceedings before departments, agencies and committees, which is defined, in pertinent part as:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

18 U.S.C. § 1505 (2011).

² The specified forged instruments include, “[a] written instrument officially issued or created by a public office, public servant or governmental instrumentality.” N.Y. Penal Law § 170.10(3) (McKinney 2011). The criminal complaint filed against ██████████ asserted that she possessed a forged passport in the petitioner’s name.

Rather than engaging in the requisite statutory analysis, counsel asserts that [REDACTED] commission of possession of a forged instrument and scheme to defraud amounted to obstruction of justice because she prevented the petitioner from pursuing legitimate immigration applications with USCIS “and thereby impeded the due and proper administration of the law before an agency.” Counsel fails to articulate how the nature and elements of these crimes are substantially similar.

Possession of a forged instrument under NYPL § 170.25 and scheme to defraud under NYPL § 190.65(1)(b) contain no element of influencing, obstructing or impeding the administration of law in a pending proceeding before a federal department or agency, which is the relevant element of the federal offense of obstruction of justice at 18 U.S.C. § 1505. The federal offense of obstruction of justice also lacks the *mens rea* of intent to defraud, deceive or injure in NYPL §§ 170.25, 190.65(1)(b); as well as the elements of possession or utterance of a forged instrument in NYPL § 170.25 and obtaining the property of another through false or fraudulent pretenses in NYPL § 190.65(1)(b). The natures of these crimes are also dissimilar. Possession of a forged instrument and scheme to defraud under NYPL §§ 170.25, 190.65(1)(b) are crimes of fraud. Obstruction of justice under 18 U.S.C. § 1505 involves impeding the proper administration of the law. Accordingly, the crimes of which the petitioner was a victim, NYPL §§ 170.25, 190.65(1)(b), are not similar to the qualifying crime of obstruction of justice.

Counsel further asserts that possession of a forged instrument under NYPL § 170.25 is substantially similar to the federal crime of perjury, defined as, in pertinent part:

Whoever--

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true

18 U.S.C. § 1621 (2011).

Counsel asserts that [REDACTED] conduct in placing a false stamp in the petitioner’s passport constituted perjury. Counsel again fails to engage in the requisite statutory analysis. Possession of a forged instrument under NYPL § 170.25 contains no element of lying under oath, a central component of perjury. The *mens rea* of these crimes are also dissimilar. Perjury under 18 U.S.C. § 1621 requires only willfulness; possession of a forged instrument under NYPL § 170.25 requires the specific intent to defraud, deceive or injure. As the nature and elements of these two crimes are not substantially similar, possession of a forged instrument under NYPL § 170.25 is not similar to the qualifying crime of perjury.

Petitioner does Not Meet the Regulatory Definition of a Victim of Perjury

Contrary to counsel's claim on appeal, even if NYPL § 170.25 was similar to perjury, the record does not demonstrate that the petitioner meets the regulatory definition of a victim of perjury. To establish that he was the victim of perjury in these proceedings, the petitioner must demonstrate that [REDACTED] committed perjury, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring her to justice for other criminal activity; or (2) to further her 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 criminal complaint against [REDACTED] was filed in 2003, well after the petitioner's last contact with her and the record lacks any evidence that [REDACTED] offense against the petitioner frustrated any law enforcement agency's investigation or prosecution. To the contrary, the offense provided further evidence of her crimes, as charged in count nine of the criminal complaint.

Counsel has also not established that [REDACTED] committed perjury to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that [REDACTED] possessed a forged instrument in the petitioner's name, for which he paid a large sum of money and that he was subjected to immigration fraud. However, [REDACTED] acted outside the legal system and her offense initiated the harm against the petitioner; it did not further any existing abuse or exploitation of him and there is no evidence that [REDACTED] exerted undue control over the petitioner.

Possession of a forged instrument under NYPL § 170.25 is not similar to the qualifying crime of perjury. Even if these crimes were similar, the record does not establish that the petitioner was the victim of perjury, as such victimization is defined at 8 C.F.R. § 214.14(a)(14)(ii).

Conclusion

On appeal, the petitioner has not demonstrated that he was a victim of obstruction of justice, perjury, or any other 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 prevents him from meeting the 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.