

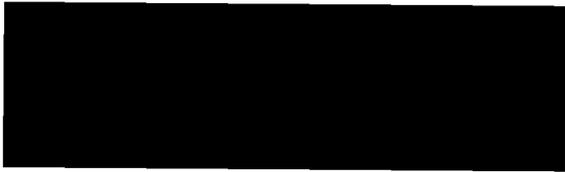
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D14

Date: Office: VERMONT SERVICE CENTER FILE: 
OCT 31 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:

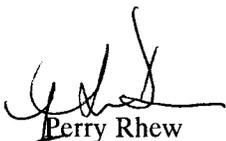


INSTRUCTIONS:

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 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)(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.

The director denied the petition because the petitioner did not submit the requisite Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) containing an original signature and did not establish that she was the victim of a qualifying crime or criminal activity. *See Director's Decision*, dated October 26, 2010. On appeal, counsel submits a brief, a new Form I-918 Supplement B and copies of documentation already in the record.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) of the Act if:

(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[.]

Further, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

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, 8 U.S.C. § 1184(p)(4).

Facts and Procedural Posture

The petitioner is a native and citizen of Mexico who, on May 15, 1999, appeared at the Brownsville, Texas port of entry and was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) on May 17, 1999. On the Form I-918 U petition, the petitioner did not indicate her date or manner of entry into the United States.

On May 7, 2008, the petitioner filed the instant Form I-918 U petition. On January 29, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On October 26, 2010, after considering the evidence of record, including counsel’s response to the RFE, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that she has made all possible efforts to obtain an original signature on the law enforcement certification and asserts that the petitioner was the victim of a crime enumerated at section 101(a)(15)(U)(iii) of the Act and the individual of whom the petitioner was a victim committed fraud and obstruction of justice. In later correspondence counsel indicates that she had obtained a new Form I-918 Supplement B containing an original signature and submits a facsimile copy of the Form I-918 Supplement B.

Analysis

Section 214(p)(1) of the Act provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Further, the regulations governing the filing of petitions with U.S. Citizenship and Immigration Services (USCIS) provide for the general requirement that all petitions must contain a handwritten signature. 8 C.F.R. § 103.2(a)(2).¹

On appeal, the petitioner through counsel submits a new Form I-918 Supplement B, dated March 10, 2011; however, this Form I-918 Supplement B is a facsimile copy only and does not contain an original handwritten signature. As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, she cannot establish her helpfulness to law enforcement in the investigation or prosecution of qualifying criminal activity, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. For this reason alone, the petition may not be approved.

Even if USCIS were to accept the Form I-918 Supplement B submitted on appeal, the petitioner has failed to establish that she was a victim of a qualifying crime. At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal act of which the petitioner was a victim as fraud, and noted the statutory citation for the crime at Part 3.3 as “Texas Government Code 406.017(2) Representation as Attorney.” When describing the criminal activity at Part 3.5, the certifying official stated that the petitioner was the victim of the unauthorized practice of law by notaries.

Section 406.017 of the Texas Government Code concerns “Representation as Attorney,” and provides, in pertinent part:

(a) A person commits an offense if the person is a notary public and the person:

* * *

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

* * *

Texas Government Code § 406.017(a)(2) (West 2011).

The particular crime that was certified is not specifically listed as a qualifying crime 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

¹ USCIS determines, in its sole discretion, the evidentiary value of the evidence submitted in support of a Form I-918 U petition, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4).

activities.” 8 C.F.R. § 214.14(a)(9).

Counsel states that if one looks at the facts and circumstances of petitioner’s victimization, the crime most closely related to notario fraud in this matter is obstruction of justice under section 1505 of Title 18 of the U.S. Code (USC). However, the proper inquiry is not an analysis of the factual details of the criminal activity, but a comparison of the nature and elements of authorized representation as an attorney under Texas Government Code § 406.017(a)(2) to obstruction of justice under 18 U.S.C. § 1505.

Under 18 USC § 1505, obstruction of justice occurs when:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

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

No element of unauthorized representation as an attorney under Texas Government Code § 406.017(a)(2) is similar to obstruction of justice under 18 U.S.C. § 1505. The Texas statute at hand punishes notary publics specifically who solicit or accept payment for the preparation of documents or represent individuals in judicial or administrative proceedings. In contrast, obstruction of justice under 18 U.S.C. § 1505 punishes any person, not just a notary public, who obstructs an antitrust investigation or any pending proceeding before a United States department or agency or congressional inquiry. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that any enforcement authority investigated an obstruction of justice crime.

Conclusion

The petitioner has failed to submit the certification required by section 214(p)(1) of the Act. She has also failed to demonstrate that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. Her failure to establish that he was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.



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As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. 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. Accordingly, the appeal will be dismissed.

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