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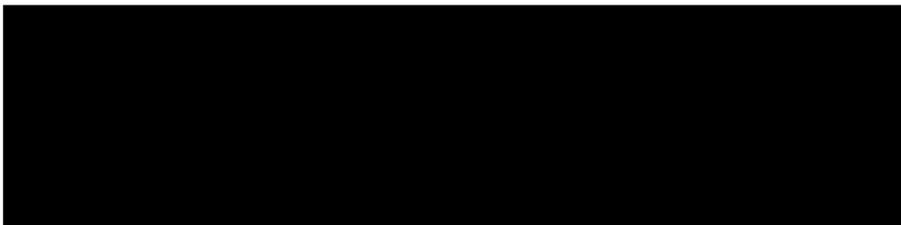
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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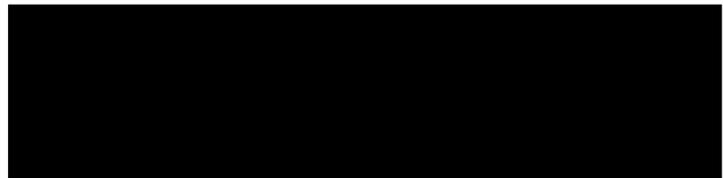


DATE: Office: VERMONT SERVICE CENTER FILE: [REDACTED]
SEP 15 2011

IN RE: Petitioner: [REDACTED]

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 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 submits a brief.

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) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who filed a Form I-589, Application for Asylum and Withholding of Removal, on January 10, 2003. The petitioner's asylum application was referred to the Immigration Court in Los Angeles, California and on March 4, 2004 the immigration judge found the petitioner removable. The petitioner filed the Form I-918 U petition that is the subject of this appeal on December 8, 2008. On July 20, 2010, the director issued a Notice of Intent to Deny (NOID) the petition informing the petitioner of deficiencies in the record and requesting additional evidence relevant to the statutory eligibility grounds at section 101(a)(15)(U)(i) of the Act to overcome those deficiencies. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed.

On appeal, counsel maintains that the petitioner was the victim of perjury and that the criminal activity committed against the petitioner was clearly committed to further the perpetrator's abuse and exploitation of the petitioner and other victims through the manipulation of the legal system.

The Claimed Criminal Activity

In her November 26, 2008 personal statement, the petitioner explained that the manager of her employer referred her to a business called [REDACTED] to assist her in obtaining work authorization. The petitioner stated that [REDACTED] who represented that he was an immigration attorney, told her she qualified for residence based on her length of time in the United States. The petitioner noted that [REDACTED] had her sign two blank documents but never told her that he was submitting an asylum application on her behalf. The petitioner stated that she paid [REDACTED] for the process. The record shows that the petitioner appeared for her asylum interview and testified that she did not know that she had applied for asylum. The petitioner stated further that she appeared before an immigration judge on March 10, 2003 and was summoned to appear again on March 4, 2004. The petitioner indicated that she appeared for the March 4, 2004 immigration hearing but was told by a representative of [REDACTED] that her hearing had been rescheduled and she did not learn until July 2008 that a removal order had been obtained against her. The petitioner indicated that she could identify the [REDACTED] representatives if asked to do so.

The statutory citations for the criminal activity that were listed on the law enforcement certifications (Form I-918 Supplement B) were California Penal Code (CPC) sections 487.1 (grand theft) and section 127 (procuring another to commit perjury).

Grand Theft Under C.P.C. § 487.1 is Not a Qualifying Crime

The crime of grand theft is not a qualifying crime 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).

Under California law, grand theft is committed "when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950) . . ." Cal. Penal Code § 487 (West 2011). Counsel does not assert on appeal that the nature and elements of theft under CPC § 487 are substantially similar to the nature and elements of any of the statutorily enumerated crimes at section 101(a)(15)(U)(iii) of the Act. Accordingly, grand theft under CPC § 487 is not established to be a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The Petitioner was not a Victim of Perjury

Under CPC § 127, subornation of perjury is defined 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.” (West 2011). 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.

C.P.C. § 118 (West 2011)

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that [REDACTED] 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 [REDACTED] harbored the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring it to justice for other criminal activity. The petitioner submitted a letter from the [REDACTED] County District Attorney’s office indicating that [REDACTED] and his associates were arrested in March 2003. As [REDACTED] was charged with grand theft through immigration fraud after the petitioner signed her asylum application in January 2003, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application avoided or frustrated the district attorney’s prosecution efforts, as the crime would only provide further evidence of [REDACTED] malfeasance.

The record also does not establish that [REDACTED] committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The record shows that [REDACTED] signed the asylum application shortly after being retained by the petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by [REDACTED] the exploitation resulted from fraud, not from further perjury under C.P.C.

§ 118 or suborning perjury under C.P.C. § 127. Accordingly, we do not find that La Guadalupana suborned the petitioner's perjury, in principal part, as a means to further its exploitation, abuse or undue control over the petitioner by its manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner has not demonstrated 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 she 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.

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.

ORDER: The appeal is dismissed.