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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: **APR 04 2012** 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 she 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 brief 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.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Guatemala. On June 29, 2005, the petitioner entered the United States without admission or parole. On August 21, 2009, the petitioner filed the instant Form I-918 U petition. On February 11, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On December 23, 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 petitioner was a victim of the qualifying crimes of perjury, involuntary servitude and trafficking, as well as the similar crime of forced labor; and that the petitioner suffered substantial physical and mental abuse as a result of those crimes. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims on appeal fail to establish the petitioner's eligibility.

Reported Criminal Activity

The U Nonimmigrant Status Certification (Form I-918, Supplement B, or law enforcement certification), which was signed by Deputy Sheriff and Director of the Human Trafficking Task Force [REDACTED] (certifying official) of the Multnomah County, Oregon Sheriff's Office on June 30, 2009 indicates that the petitioner was the victim of criminal activity involving, or similar to, peonage, perjury, trafficking and the conspiracy and attempt to commit any of those crimes.¹ At

¹ A letter, dated March 8, 2010, signed by [REDACTED] Sheriff of Multnomah County, Oregon indicates that the certifying official is working under a grant from the Bureau of Justice Assistance and is

part 3.3 of the law enforcement certification, the certifying official stated the following sections of the Oregon Revised Statutes as the criminal activity being investigated or prosecuted, or that had been investigated or prosecuted:

Perjury under section 162.065 of the Oregon Revised Statutes (O.R.S.):

A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false.

Involuntary servitude under section 163.263 of the O.R.S.:

(1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

(a) Abusing or threatening to abuse the law or legal process;

(b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;

(c) Threatening to report a person to a government agency for the purpose of arrest or deportation;

(d) Threatening to collect an unlawful debt; or

(e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.

On appeal, counsel also claims that the petitioner was the victim of involuntary servitude under federal law:

the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

United States v. Kozminski, 487 U.S. 931, 952 (1988).

While the certifying official did not indicate an investigation into the section of the O.R.S. relating

authorized by the Sheriff to sign Form I-918 Supplement B Forms.

to trafficking in Part 3.3 of the Form I-918, Supplement B, section 163.266 of the O.R.S. also provides, in regard to the crime of trafficking, that:

(1) A person commits the crime of trafficking in persons if the person knowingly:

(a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or

(b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.26.

At Part 3.5, the certifying official described the criminal activity being investigated and/or prosecuted to be “perjury regarding Del Monte Fresh and the I-9 Form. Del Monte Fresh was using perjury in order to obtain labor, thereby committing involuntary servitude.” At Part 3.6, the certifying official described the known or documented injuries to the petitioner as working excessive hours without full compensation, working without adequate breaks and in wet and cold conditions without adequate protective clothing. At Part 4, the certifying official described the helpfulness of the petitioner as “interviewed regarding events while the [petitioner] worked at Del Monte Fresh. She has helped by giving facts in an investigation regarding Del Monte Fresh and Peonage, Perjury, Trafficking and attempt to commit any of these crimes and conspiracy to commit any of these crimes.”

The certifying official submitted a Multnomah County Sheriff’s Office special information form noting that he had interviewed the petitioner on June 30, 2009, at the request of her immigration lawyer, “to investigate the possibility that [the petitioner] was a victim of human trafficking and to possibly offer more evidence to the Del Monte case.” In a case number report accompanying the special information form, the certifying official recounted the petitioner’s following, pertinent statements. The petitioner applied for work with Del Monte Fresh Produce (Del Monte) in Portland, Oregon after she was told that Del Monte hired individuals from other countries without lawful immigration status in the United States. According to the petitioner, an office worker at Del Monte completed the employment application for the petitioner. The petitioner “stated that she used an illegal social security number which she purchased from a guy earlier.” The petitioner reported that she began working at Del Monte in July 2005 until she was apprehended by U.S. Immigration and Customs Enforcement officials during a worksite enforcement action in 2007. The petitioner reported that she peeled fruit in very cold and wet conditions; she worked 10-13 hour shifts without being compensated for overtime; she was not permitted to use the bathroom when needed; and that the supervisors would yell at the workers and threaten to fire them if they did not work faster.

In an unsigned letter, dated April 29, 2010, the certifying official provided additional information and indicated that he had been investigating Del Monte for perjury, O.R.S. 162.065; peonage, O.R.S. 163.263 (involuntary servitude in the second degree); attempt, conspiracy, or solicitation

to commit any of these crimes; or “any similar activity in violation of federal, state or local criminal law, 8 U.S.C. § 1101(a)(15)(U)(iii).” In addition to what was previously described in the case number report, the certifying official stated that the petitioner reported that during her time at Del Monte, she lost feeling in her hands and feet due to the cold and wet conditions and she still suffers from these sensations in her hands and feet; and that she worked with large amounts of bleach, which was splashed all over her and she still experiences burning eyes.

In the petitioner’s May 4, 2009 self-affidavit, she stated that when she arrived in the United States her cousin told her that Del Monte was hiring and she went to the office of Del Monte where another girl who was also there applying for a job helped her to complete the paperwork. The petitioner stated that the girl informed her that she knew where “work documents” were sold, the petitioner gave the girl money and the girl “took care of the rest.” When Del Monte asked the petitioner for “documents to show [she] could work,” she “gave them some documents” and she began working for Del Monte in July 2005. The petitioner recounted that she worked shifts of 10-13 hours or more and was required to work overtime, but never received overtime pay. The petitioner stated that she got only one ten minute break and a twenty-five minute lunch break. The petitioner reported that she was not permitted to use the bathroom when needed and had to try her best to hold it until a break or lunch because she would be fired otherwise.

The petitioner explained that she had to endure whatever Del Monte told her because she needed a job to survive and to be able to send money back home. The petitioner stated that Del Monte only provided the workers with one apron and one pair of gloves per day, which were inadequate to protect her from the freezing-cold water. The petitioner reported that she constantly lost feeling in her hands and feet and that she still has pain in her feet, legs and back. The petitioner also stated that bleach water frequently splashed all over her, especially in her eyes, and now her eyes still burn and hurt badly when the heat is on, but she has not seen a doctor for lack of money and medical insurance. The petitioner recounted that she was constantly screamed at by supervisors at Del Monte who told her to hurry up and work faster, otherwise they would fire her. The petitioner explained that she needed a job and she endured the conditions out of necessity. The petitioner stated that she felt fearful and unable to defend herself because she did not “have papers.” In a second statement, dated August 13, 2009, the petitioner claimed that she “suffered extreme emotional and physical distress while working under overly stressful working conditions at Del Monte Fresh.”

The petitioner also submitted several documents relating to an investigation of, and class action lawsuit against, Del Monte. In an October 15, 2007 news release, the Oregon Department of Consumer and Business Services stated that the Oregon Occupational Safety and Health Division intended to fine Del Monte and an affiliated staffing agency \$28,700 and cited them for multiple safety and health violations as a result of an inquiry into working conditions at the food packaging plant at which the petitioner worked. The petitioner also submitted a news article regarding the investigation and lawsuit.

The petitioner also submitted a June 8, 2007 affidavit from [REDACTED] a special agent with the U.S. Immigration and Customs Enforcement (USICE) Office of Investigations, which

was filed before the U.S. District Court for the District of Oregon in order to obtain a search warrant of the Del Monte plant where the petitioner was employed. In his affidavit, Mr. [REDACTED] describes in detail his investigation into Del Monte's employment of undocumented workers through the services of American Staffing.

Analysis

Counsel claims that the petitioner is the victim of perjury because there are reasonable grounds to conclude that Del Monte committed perjury "by falsifying employment documents, at least in principal part, as a means to avoid being brought to justice for hiring illegal workers and forcing them to work in illegal working conditions." The record does not support counsel's claim.

Even if Del Monte knew that the petitioner's social security number was illegally procured and committed perjury in completely any employment-related documentation, the relevant evidence does not demonstrate that Del Monte committed perjury to avoid or frustrate efforts by law enforcement personnel to bring them to justice for other criminal activity, or that Del Monte committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system, as required by the regulation at 8 C.F.R. § 214.14(a)(14)(ii).

The record reflects that Del Monte did not have a prior relationship with the petitioner and if perjury occurred, it was solely committed for the purpose of hiring the petitioner. Apart from Del Monte's possible perjury in completing employment-related documentation, the relevant evidence does not indicate that any of Del Monte's subsequent dealings with the petitioner involved perjury. The record shows that Del Monte completed the employment application and Form I-9 upon the company's initial meeting with the petitioner and, thus, the perjury initiated the hiring of the petitioner, but it did not further any existing abuse or exploitation of the petitioner. While the record shows that the petitioner was exploited by Del Monte, the exploitation resulted from deplorable working conditions at Del Monte's factory, not from further perjury under O.R.S. § 162.065.

In addition, the petitioner cannot be considered a victim of perjury because she herself is culpable of this offense. The applicant obtained employment with Del Monte by knowingly providing false identity documents, which she had purchased. She is consequently culpable of misrepresenting her authorization to work, and she cannot be recognized as a victim of the crime of perjury. See 8 C.F.R. § 214.14(a)(14)(iii) (If a petitioner "is culpable for the qualifying criminal activity being investigated or prosecuted[, she is] excluded from being recognized as a victim of qualifying criminal activity."). The petitioner, therefore, is not the victim of the qualifying crime of perjury as required by section 101(a)(15)(U) of the Act.

On appeal, counsel asserts that the petitioner was the victim of involuntary servitude under federal and Oregon law because Del Monte forced the petitioner to perform services through the threatened abuse of the law and legal processes through intentional illegal hiring; violations of workplace safety and wage and hour laws; by threats to fire her; and by threatening and refusing to provide life necessities, if she did not comply with the illegal conditions of the job.

The record does not support counsel's claims. Counsel asserts that the petitioner provided services to Del Monte because she feared that if she did not work she would be fired and without lawful immigration status, she would be unable to find other employment, which would result in her loss of income and ability to afford basic necessities such as lodging, food and clothing. The threat of possible termination of the petitioner's employment does not constitute involuntary servitude under Oregon law. The record does not show that, in the petitioner's case, Del Monte's threat of possible termination of the petitioner's employment and poor working conditions were equivalent to instilling a fear in the petitioner that she would be deprived of life necessities such that she was a victim of involuntary servitude under Oregon law.

Counsel asserts that the petitioner was forced to work for Del Monte by the abuse or threatened abuse of the law or legal process by knowingly hiring individuals without lawful immigration status and using their vulnerabilities to put their health and safety at risk. Counsel asserts that petitioner requested a job without hiding her immigration status and Del Monte took money from the petitioner to purchase fake documentation to enable Del Monte to complete the necessary forms for the petitioner. Counsel asserts that the petitioner only endured the horrible working conditions at Del Monte because she was placed in fear of injury or coercion because she would either (1) be left jobless in a country far from home; or (2) be deported back to Guatemala where she would be subject to further physical abuse. There is no evidence that Del Monte forced or attempted to force the petitioner to work by abusing or threatening to abuse the law or legal process. Contrary to counsel's assertions on appeal, the petitioner has never stated that anyone at Del Monte threatened her with anything other than being fired if she was unable to work. The petitioner does not describe any incident where Del Monte employees specifically threatened her with arrest and deportation or any other form of abuse of the law or legal process. Consequently, the record fails to support counsel's claims that the petitioner was the victim of the qualifying crime of involuntary servitude, under either Oregon or federal law.

The record also does not support counsel's claim on appeal that the petitioner was the victim of trafficking because Del Monte obtained the petitioner's services knowing she would be subjected to workplace conditions that would include involuntary servitude. Counsel asserts that Del Monte benefitted financially from forcing the petitioner to work without adequate pay and by not having to pay to ensure a safe and healthy work environment. However, a showing of involuntary servitude is necessary in order to establish victimization under the Oregon trafficking statute. O.R.S. Ann. § 163.266 (2009). As the petitioner has not made that demonstration, she has not established that she was the victim of trafficking.

Counsel also contends that the petitioner was the victim of forced labor under 18 U.S.C. § 1589 and has been certified as such; however, the certifying official did not state that this crime was investigated and/or prosecuted and counsel has failed to otherwise establish that the petitioner was the victim of forced labor.

The petitioner's supporting documentation, including [REDACTED] affidavit, the information regarding the class action lawsuit against Del Monte, and the information regarding fines leveled

against Del Monte for workplace violations, establish Del Monte's illegal practices and mistreatment of workers while the petitioner was employed with the company. That evidence does not, however, specifically identify the petitioner as a victim or otherwise establish that she was herself subjected to perjury, involuntary servitude, trafficking or any other qualifying criminal activity.

The record does show that the petitioner was helpful to the certifying agency in its investigation of Del Monte and that she possessed some information about Del Monte's hiring practices, mistreatment of its workers and unsafe facilities. While the petitioner's assistance in these legal actions against Del Monte may have been valuable and was laudable, counsel has not demonstrated that any offenses committed against the petitioner by Del Monte constituted qualifying criminal activity under subsection 101(a)(15)(U)(iii) of the Act.

Being a victim of qualifying criminal activity is a threshold requirement for the remaining U nonimmigrant eligibility criteria at subsection 101(a)(15)(U)(i) 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 section 101(a)(15)(U)(i) 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.