

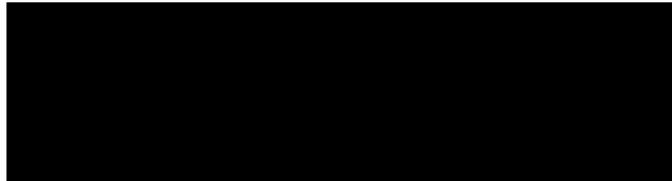
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

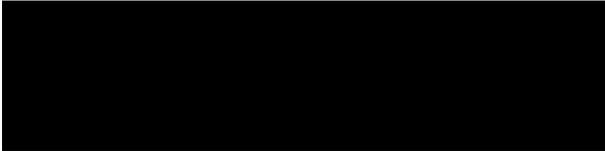


D14

Date: **JUN 19 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. § 101(a)(15)(U)

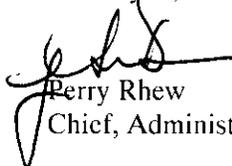
ON BEHALF OF PETITIONER:


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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (“the director”), 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.

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:

- (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 (ii);
 - (II) the alien . . . possesses information concerning criminal activity described in clause (ii);
 - (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 (ii); and
 - (IV) the criminal activity described in clause (ii) 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 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 (law enforcement 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).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims she last entered the United States on or around October 2009. The record does not include evidence that the petitioner was admitted or paroled into the United States. The petitioner states that all her life she thought she was a United States citizen even though she attended school in Mexico through sixth grade. She notes that she finished school in Brownsville, Texas and attended two years of college in Texas. She petitioned as a United States citizen for her husband to receive lawful permanent resident status in 2006. On July 7, 2009 she was informed in a Notice of Intent to Deny a Petition for Alien Relative (Form I-130) that she had filed on behalf of her husband, that a Mexican authenticated birth registration showed she was born in Mexico, not the United States; thus she was not eligible to petition for her husband as a United States citizen. The petitioner indicates that her U.S. birth certificate was signed by a

midwife, E-G-,¹ and she is willing to testify to these facts.

The petitioner filed the instant Form I-918 U petition on February 2, 2010. On January 11, 2010, a Sergeant of the Brownsville Police Department certified that the petitioner was the victim of criminal activity involving forgery and tampering with a governmental record. *Form I-918 Supplement B*, dated January 11, 2010. The certifying official listed the statutory citation for the criminal activity being investigated or prosecuted at Part 3.3 of the Form I-918 Supplement B as Texas Penal Code (TPC) §§ 32.21 (forgery) and 37.10 (tampering with a governmental record). The certifying official stated at Part 3.5 that a midwife falsified a birth certificate when the petitioner was an infant (on May 26, 1981) and the petitioner was not aware of the falsification until a visa petition she had filed was denied because she was not a United States citizen. The certifying official attached an incident narrative to the Form I-918 Supplement B indicating that the petitioner appeared to file a report against E-G-, a midwife, for tampering with a governmental record, and that E-G- is currently incarcerated for similar charges.

The director subsequently issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of her claim. The petitioner responded, through counsel, with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition finding that the petitioner 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, the petitioner contends, through counsel, that she was the victim of a crime substantially similar to perjury. Counsel asserts further that the Attorney General² acted beyond his authority when promulgating a regulation that limits USCIS from considering that perjury was investigated or prosecuted only if the perjury was accomplished in connection with qualifying criminal activity.

Analysis

As stated earlier in this decision, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4). Here, the certifying official indicated at Part 3.1 of Form I-918 Supplement B that the petitioner is the victim of forgery and tampering with a governmental record and at Part 3.3 that the crimes being investigated or prosecuted by the certifying agency were forgery under TPC § 32.21 and tampering with a governmental record under TPC § 37.10. *See Form I-918 Supplement B, Part 3.3.*

Preliminarily, counsel's assertions regarding the promulgation of the U nonimmigrant interim rule are misguided. First, as explained in its preamble, the rule does not require a nexus between the crimes of witness tampering, obstruction of justice, or perjury to one of the other listed crimes but

¹ Name withheld to protect the individual's identity.

² The U nonimmigrant visa interim rule was published by the Department of Homeland Security, not the Department of Justice. 72 Fed. Reg. 53014, 53024 (Sept. 17, 2007).

may qualify independently. Second and most importantly, counsel's complaint regarding the implementation of regulations to enforce acts of Congress is improperly before the AAO as we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

Counsel does not assert, and the evidence does not demonstrate, that forgery under TPC § 32.21 is a qualifying crime or is substantially similar to any qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Accordingly, only the crime of tampering with a governmental record in violation of TPC § 37.10 shall be assessed.

Tampering with a governmental record 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 activities." 8 C.F.R. § 214.14(a)(9).

Section 37.10 of the TPC provides: Tampering With Governmental Record.

- (a) A person commits an offense if he:
 - (1) knowingly makes a false entry in, or false alteration of, a governmental record;
 - (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
 - (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
 - (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
 - (5) makes, presents, or uses a governmental record with knowledge of its falsity; or
 - (6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

Tex. Penal Code Ann. § 37.10 (West)

Section 37.02 of the TPC defines perjury as:

- (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:
 - (1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

- (2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

Tex. Penal Code Ann. § 37.02 (West)

Section 132.001 of the Texas Civil Practice and Remedies Code provides in pertinent part:

- (c) An unsworn declaration made under this section must be:
 - (1) in writing; and
 - (2) subscribed by the person making the declaration as true under penalty of perjury.

The midwife's signature on the petitioner's birth certificate, certifying that she attended the petitioner's birth in Texas is not a false statement made under oath. Nor does the record include the midwife's sworn statement as to the truth of a false statement that she made. There is no evidence that the midwife's signature was required or authorized by law to be made under oath. The midwife's signature on the petitioner's birth certificate is also not an unsworn declaration subscribed on the birth certificate as true under the penalty of perjury. Accordingly, section 132 of the Texas Civil Practice and Remedies Code is not applicable. Thus, E-G-'s false certification that she attended the petitioner's birth in Texas is not substantially similar to the Texas definition of perjury which requires the false statement(s) to be made under oath. Other than asserting that the crime of tampering with a governmental record and perjury are substantially similar under Texas law, counsel does not engage in the requisite statutory analysis demonstrating how the certified crime in this matter is substantially similar to perjury or any other qualifying crime. The record does not establish that the elements of the offense of tampering with a governmental record are substantially similar to any of the statutorily enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

Even if counsel had shown that the midwife's false certification was substantially similar to the qualifying crime of perjury, which it is not, the petitioner has not demonstrated that E-G- committed this crime, 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). Apart from E-G- falsely certifying that she attended the petitioner's birth in the United States, the relevant evidence does not indicate that E-G- had any subsequent dealings with the petitioner. The false certification in 1981 initiated the harm, it did not further any existing abuse or exploitation of the petitioner. Accordingly, we do not find that E-G-'s offense was accomplished, in principal part, as a means to further her exploitation, abuse or undue control over the petitioner by her manipulation of the legal system. Similarly, there is no evidence that E-G- falsified the petitioner's birth record as a means to frustrate efforts by law enforcement personnel to bring her to justice for other criminal activity. The petitioner has not established that she is the victim of a substantially similar crime to 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 met her burden of showing that she was the victim of a qualifying crime or criminal activity under section 101(a)(15)(U)(iii) of the Act or substantially similar crimes. She, therefore, also failed to meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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. Accordingly, the appeal will be dismissed.

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