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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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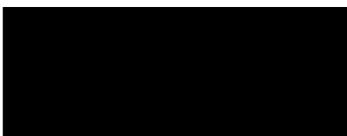
DATE: **MAR 02 2012** Office: VERMONT SERVICE CENTER

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 (“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) 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.

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.

* * *

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).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who was paroled into the United States in November 2003. The petitioner filed the instant Form I-918 U petition on April 15, 2010. On September 7, 2010, the director issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner was the victim of qualifying criminal activity and met any of the statutory eligibility criteria. The petitioner timely appealed. On appeal, counsel submits a brief. Counsel states that the director based his decision on incorrect facts, ignored the evidence from the certifying official, and that his decision violates the petitioner's due process rights and USCIS's obligations under the Administrative Procedures Act (APA).

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We withdraw the director's determination that the petitioner was "a victim of extortion, involuntary servitude, and peonage related to labor regulations," as our review of the record reveals no evidence of the investigation of such crimes by the certifying official who provided the law enforcement certification. We do, however, affirm the director's ultimate determination that the petitioner has not established her eligibility for U nonimmigrant status because she was not the victim of qualifying criminal activity.

The law enforcement certification (Form I-918 Supplement B) that the petitioner submitted is signed by The Chief Counsel, Criminal Division, Office of the Attorney General of the State of Arizona. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as extortion, involuntary servitude, peonage and conspiracy to commit those crimes, as well as the crimes listed on an attached indictment. The certifying official also referred to an attached indictment at Part 3.3 rather than listing the statutory citations for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official indicated that the petitioner was the victim of fraud at the hands of her employer, who forced her to work without pay and made her repay wages that her employer had given her as back wages.¹ The certifying official stated, "not applicable" in Part 3.6, which asks for a description of any known or documented injury to the petitioner.

¹ The petitioner worked at a restaurant that was owned by one of the two limited liability companies listed on the indictment. The three owners of the limited liability companies were indicted.

The indictment attached to the Form I-918 Supplement B indicated that the petitioner's employers were charged with violating Arizona Revised Statutes (A.R.S.) §§ 13.2310 (fraudulent schemes and artifices) and 13-1802 (theft), as well as conspiracy to commit those crimes. The petitioner's employers either pled guilty to or were convicted of tampering with a witness in violation of A.R.S. § 13-2804.

Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of extortion, involuntary servitude and peonage, he presented no evidence that he or any other law enforcement entity investigated these crimes, and only describes the petitioner's victimization by her employer's wage-related fraud when recounting the criminal activity that was investigated or prosecuted at Part 3.5. In addition, the indictment and the sentencing reports do not contain any evidence of an investigation or prosecution of extortion, involuntary servitude or peonage by the petitioner's employers against her. While it is clear that the petitioner was helpful to the Attorney General's Office as a witness against her employer's wage-related fraud, the Form I-918 Supplement B and attached court documents do not support a conclusion that the petitioner was the victim of extortion, involuntary servitude or peonage. As stated earlier, 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). Accordingly, we consider the certified crimes as fraudulent schemes, theft and conspiracy to commit those crimes. Although the petitioner's employers were convicted of or pled guilty to witness tampering in violation of A.R.S. § 13-2084, the certifying official did not indicate on the Form I-918 Supplement B that the petitioner was the victim of this crime, the sentencing reports for the petitioner's employers do not list her as such a victim, and the petitioner in her March 23, 2010 declaration also does not describe being a victim of witness tampering.

The crimes of theft and fraudulent schemes and artifices are not specifically listed as qualifying crimes 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 Arizona Law: "Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony." A.R.S. § 13-2310 (West 2011). The petitioner's employers were indicted for committing theft under subsection A.R.S. § 13-1802(a)(3), which states that a "A person commits theft if, without lawful authority, the person knowingly . . . [o]btains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services[.]"

While counsel asserts on appeal that the crime of witness tampering is closely related to the crimes of extortion, peonage and involuntary servitude, the record does not demonstrate that the petitioner was a victim of any of these crimes, and counsel does not provide any analysis of the Arizona statutes to illustrate that the nature and elements of fraud and theft under Arizona law are substantially similar to any qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act.

To be eligible for U nonimmigrant classification, petitioners must establish that they were helpful to the investigation or prosecution of qualifying criminal activity of which they themselves were victims. 8 C.F.R. § 214.14(b)(2), (c)(2)(i). Contrary to counsel's assertion on appeal, the record contains no evidence that the petitioner was the victim of any qualifying crime that the certifying agency investigated or prosecuted. Although the record shows that the petitioner's employers pled guilty to or were convicted of witness tampering, the record does not establish that the petitioner herself was a victim of such crime or any other qualifying criminal activity.

Finally, counsel contends on appeal that the director violated the petitioner's due process rights as well as USCIS's obligations under the APA, but fails to specify what those violations entailed. While we acknowledge that the director noted an incorrect RFE date in the denial decision, the petitioner has not established that the denial of the petition was erroneous or that any resultant prejudice violated her right to due process. *Hassan v. INS*, 927 F.2d 465, 469 (9th Cir. 1991) (due process violation exists only where alien demonstrates resultant prejudice). The petitioner bears the burden of proof in these proceedings and must establish, by a preponderance of the evidence, that she is eligible for U nonimmigrant classification. The director's decision was neither arbitrary nor capricious, as he analyzed the relevant evidence and provided a factual foundation for his finding that the petitioner was not the victim of qualifying criminal activity. Prior to denying the petition, the director issued an RFE notifying the petitioner of the deficiencies in the evidence and providing her with an opportunity to respond. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case.

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. She, therefore, also fails 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.

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