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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

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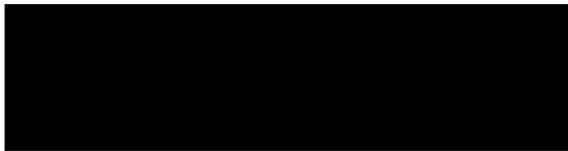
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Date: **MAR 27 2012** Office: VERMONT SERVICE CENTER FILE: 

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:

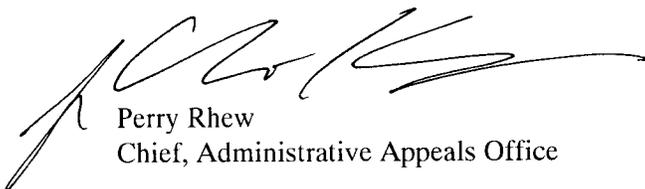


INSTRUCTIONS:

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and 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.

* * *

(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. 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); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary here. The petitioner filed the instant Form I-918 U petition on November 25, 2008, and the director subsequently issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he suffered substantial physical and mental abuse as a result. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and the petitioner timely appealed such denial. In our prior decision, we determined that the crime of which the petitioner was a victim, grand theft, was not a qualifying crime and was not substantially similar to any of the crimes enumerated at section 101(a)(15)(U)(iii) of the Act. We additionally determined that the petitioner was not the victim of perjury, under the requirements of 8 C.F.R. § 214.14(a)(14)(ii), because the perpetrator, [REDACTED] did not commit a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system, and [REDACTED] also did not commit perjury to avoid or frustrate law enforcement efforts to bring him to justice. We concluded that the petitioner was not the victim of qualifying criminal activity and even if he had been, he would be ineligible for U nonimmigrant classification because he had not suffered substantial physical or mental abuse as a result of his victimization. On motion, counsel submits additional materials and a brief stating that the crime of grand theft is intertwined with the crime of perjury and that the mental abuse suffered by the petitioner at the hands of [REDACTED] was substantial.

Analysis

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 and the additional materials submitted on motion fail to establish that our prior decision was based upon an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and we affirm our prior determinations that the petitioner was not the victim or qualifying criminal activity and did not suffer substantial physical or mental abuse.

On motion, counsel repeats her assertion that █████ committed the qualifying crime of perjury so that the petitioner would continue to need and rely on him for legal representation throughout his removal proceedings, and that the two crimes of grand theft and perjury are, therefore, intertwined. According to counsel, the petitioner became a victim of grand theft through perjury because █████ intentionally and dishonestly took the petitioner's property (his money) by manipulating the legal system. Counsel asserts that █████ knew when filing an asylum application on the petitioner's behalf that the petitioner would eventually be placed into removal proceedings before the immigration court and would continue to require █████ services to represent him. According to counsel, █████ continued his exploitation of the petitioner after the filing of the frivolous asylum application by submitting an application for cancellation of removal before the immigration court on which Ramos indicated a false date of entry into the United States for the petitioner.

As stated in our prior decision, the evidence in the record demonstrates that the petitioner was harmed by █████ and that he was the victim of notario fraud committed by █████ The evidence does not demonstrate, however, that █████ committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. The evidence also does not indicate that █████ after filing the asylum application, completed the cancellation of removal application on the petitioner's behalf that was submitted to the immigration court, as counsel claims. As stated in our prior decision, apart from █████ filing of the asylum application, the relevant evidence does not indicate that any of █████ subsequent dealings with the petitioner involved perjury. The record shows that █████ filed the frivolous asylum application shortly after his first meeting with 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 Ramos, the exploitation resulted from notario fraud and █████ subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that █████ perjury offense was accomplished, in principal part, as a means to further his exploitation, abuse or undue control over the petitioner by his 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)(I) of the Act.

Substantial Physical or Mental Abuse

In our prior decision, we concluded that even if the petitioner had demonstrated that he was the victim

of qualifying criminal activity, he failed to establish that he suffered resultant substantial physical or mental abuse. On motion, counsel states that the petitioner “is not able to live a normal life and function normally,” but fails to provide any evidence to support her assertions. We previously addressed the evidence submitted below, including the petitioner’s January 8, 2008 statement in which he described the nightmares he has experienced, and stated that he suffers from anxiety and depression. As we previously concluded, the petitioner did not provide any probative details of the effects of the criminal activity on him to lead to a conclusion that he suffered substantial physical or mental abuse. Similarly, the petitioner’s psychological evaluation, dated November 24, 2008 and submitted below, from ██████████ did not provide any probative details regarding the effects of the criminal activity on the petitioner’s daily life in light of his diagnoses of anxiety and depression, which were made nearly 12 years after he retained ██████████ services.¹

On motion, counsel also submits printouts of articles on depression and anxiety from the websites of MedlinePlus and WebMD. Counsel claims that these articles and ██████████ evaluation show that the petitioner suffered substantial mental abuse as a result of his victimization because his anxiety and depression have interfered with his ability to function normally. We do not discount ██████████ credentials or the harm that ██████████ actions caused the petitioner. However, the record still lacks sufficient, probative evidence that the harm suffered by the petitioner constituted substantial physical or mental abuse under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i)(I) and (iii) of the Act. He, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(II)–(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 motion is granted. The AAO’s prior decision, dated February 25, 2011, is affirmed. The appeal remains dismissed and the petition remains denied.

¹ Counsel claims on motion that by noting the lack of evidence relating to the petitioner’s pursuit of ██████████ therapy recommendations, the AAO erroneously concluded that the petitioner did not suffer substantial physical or mental abuse. While a petitioner may be found to have suffered substantial physical or mental abuse absent a showing that he or she sought mental health counseling or treatment, in this specific case, the petitioner’s diagnoses alone were insufficient to demonstrate that he suffered substantial physical or mental abuse.