

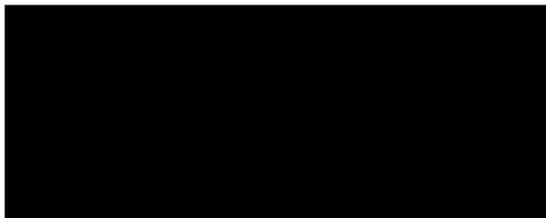
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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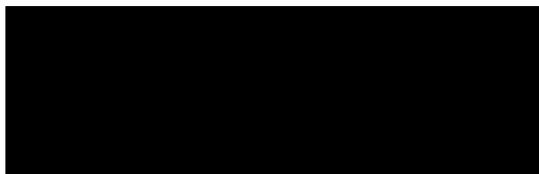


IN RE: PETITIONER:



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 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, 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 Notice of Appeal (Form I-290B), a brief and copies of financial documentation.

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[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1992 without being inspected, admitted or paroled. On November 2, 2000, the petitioner's father filed an Application for Asylum and Withholding of Removal (Form I-589) upon which the petitioner was listed as a derivative . On December 15, 2000, the Form I-589 was referred to an immigration judge and the petitioner was placed into removal proceedings. On December 10, 2004, the immigration judge denied the petitioner's applications for asylum, withholding of removal and cancellation of removal and granted her voluntary departure until February 8, 2005. The petitioner filed an appeal with the Board of Immigration Appeals (BIA). On April 3, 2006, the BIA dismissed the petitioner's appeal and granted her 60 days of voluntary departure. The petitioner filed a petition for review with the Ninth Circuit Court of Appeals (Ninth Circuit). On April 25, 2007, the Ninth Circuit dismissed in part and denied in part the petition for review.

On May 18, 2010, the petitioner filed the instant Form I-918 U petition. On August 10, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a

timely response. On March 22, 2011, 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 individual who defrauded the petitioner and her parents committed perjury, extortion and theft.

The Claimed Criminal Activity

The petitioner claimed in her October 28, 2009 declaration that she and her parents were the victims of qualifying criminal activity because she was ordered deported as a result of her parents using the services of J-C-.¹ The petitioner claimed that the services provided by J-C- ultimately turned out to be fraudulent because he filed for political asylum for her and her parents, which she found out is fraudulent because she is from Mexico. The petitioner claimed that J-C- told her parents that it would cost them \$10,000 for the family, with a down payment of \$2,000 to get residency.

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by [REDACTED] (certifying official) of the Orange County, California District Attorney's Office. At Part 3.1, the certifying official indicated that the petitioner was the victim of notary fraud. At Part 3.3, the certifying official cited section 487(a) of the California Penal Code (CPC) as the criminal activity. Under CPC § 487(a) 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 Ann. § 487(a) (West 2012).

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as notary fraud and misrepresentation by promising to obtain residency for the petitioner while knowing that the petitioner was not able to obtain permanent residency in the United States. The certifying official indicated that the original complaint against J-C- included violations of CPC §§ 487(a), 664 (attempt to commit a crime), and 127(subornation of perjury), but that J-C- pled guilty to CPC § 487(a). At Part 3.6, Mr. Burnett described the known or documented injury to the petitioner as substantial and emotional injury and that the petitioner paid \$8,000 to J-C- which only resulted in her order of removal.

In response to the director's RFE, the petitioner submitted another declaration, undated, reiterating the same statements made in her previous declaration and noting that when her father met with J-C- he promised that he could obtain residency for the family within a year. The petitioner claimed that when the family was granted voluntary departure J-C- said that he could not file the applications due to the length of time the family had spent in the United States and that he had forgotten to inform the family that he had to file political asylum applications. The petitioner claimed that J-C- kept telling the family not to worry, but that all the appeals failed and J-C- kept charging the family fees.

¹ Name withheld to protect the identity of the individual.

As evidence supporting the Form I-918 Supplement B, the petitioner submitted articles from the Los Angeles News and the CotoBuzz Journal about J-C- and his business, which described the indictment of J-C- and his associates. The petitioner also submitted an Orange County docket report which lists the charges brought against J-C-.

On appeal, counsel claims that the petitioner was the direct victim and suffered proximate harm as a result of perjury, extortion and theft.

Grand Theft Under C.P.C. § 487 is Not Substantially Similar to the Qualifying Crime of Extortion and the Petitioner has not Established that she was the Victim of Extortion

Although the crime of extortion is listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime, the certifying official did not indicate at Parts 3.1 or 3.5 of the Form I-918 Supplement B that the petitioner was a victim of that crime. The certifying official also provided no evidence that an extortion crime was ever investigated by law enforcement authorities. Accordingly, we do not consider the crime of extortion to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute J-C- in the future for such a crime.

The crime of grand theft is not a statutorily enumerated 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).

On appeal, counsel states that the director incorrectly determined that the petitioner was not a victim of extortion because it is reasonable to conclude that J-C- threatened the petitioner if she did not pay him.² As stated earlier, 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 Ann. § 487(a) (West 2012).

Extortion is defined under CPC § 518 as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” Cal. Penal Code Ann. § 518 (West 2012).³

² It is noted that the petitioner, in her declarations, made no claim to the threats to which counsel refers. Moreover, the Form I-918 Supplement B from the certifying official does not reflect that the petitioner was subjected to extortion.

³ Under CPC § 524, a threat or an attempt to extort is defined as: “Every person who attempts, by means of any threat, such as is specified in Section 519 of this code, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.” Cal. Penal Code Ann. § 524 (West 2012).

Grand theft is not substantially similar to extortion. Extortion under CPC § 518 requires that the victim's property be obtained through the victim's consent, which was "induced by a wrongful use of force or fear, or under color of official right." Grand theft under section CPC § 487(a) contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of grand theft is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

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." Cal. Penal Code Ann. § 127 (West 2012).

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that J-C- 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 him to justice for other criminal activity; or (2) to further his 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 the petitioner perjured herself. The petitioner was listed as a derivative on her father's asylum application; she did not sign the application and did not testify that J-C- had her sign any documentation. Thus the evidence does not establish that the petitioner perjured herself by signing an application for an immigration benefit that contained false information.

In this case, the relevant evidence shows that grand theft was the only crime of which the petitioner was a victim. Because grand theft is not crime listed at section 101(a)(15)(U)(iii) of the Act, and the petitioner failed to demonstrate that the nature and elements of grand theft under CPC § 487(a) are substantially similar to the crimes of extortion and perjury, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act, the petitioner has not demonstrated that she was the victim of a qualifying crime, as required for U nonimmigrant classification.

Remaining Eligibility Criteria

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as defined at subsection 101(a)(15)(U)(iii) of the Act, and as required by subsection 101(a)(15)(U)(i)(I) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status, including the requirement of having suffered substantial physical or mental abuse as the result of such victimization. See subsections 101(a)(15)(U)(i)(I)-(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

Conclusion

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. The petition remains denied.