

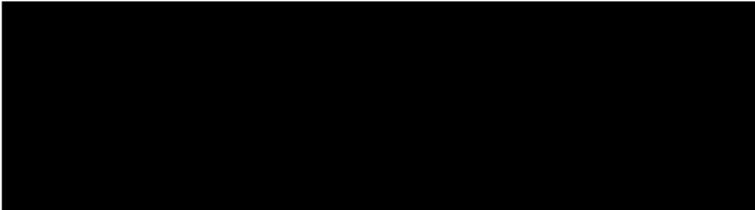
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 16 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)

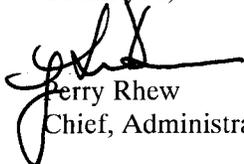
ON BEHALF OF PETITIONER:


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.

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, 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 Guatemala who claims to have entered the United States without being inspected, admitted or paroled on or around May 2000. According to the record, the petitioner began working for [REDACTED] in or about January 2001 until June 2004 when she left because she was pregnant. The record shows that she worked again for [REDACTED] from February 2007 until June 12, 2007 when United States Immigration and Customs Enforcement (USICE) raided the plant and that she worked again for [REDACTED] beginning in June 2009. On July 1, 2009, the Director of the Human Trafficking Task Force of the [REDACTED] Sheriff's Office certified that the petitioner was the victim of criminal activity involving peonage (involuntary servitude), perjury, trafficking as well as attempt, conspiracy or solicitation to commit the named crimes, committed by [REDACTED] *Form I-918 Supplement B*, dated July 1, 2009; *Letter from [REDACTED]* dated March 17, 2011.

The petitioner filed the instant Form I-918 U petition on August 21, 2009. On January 12, 2011, the director 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 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 substantially similar crimes to the qualifying crimes of involuntary servitude, trafficking, and perjury, and that she meets the remaining requirements for U nonimmigrant classification.

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 on Part 3.1 of Form I-918 Supplement B that the petitioner is the victim of peonage, perjury, and trafficking. *Form I-918 Supplement B*. However, the certifying official stated at Part 3.3 that the only crimes investigated or prosecuted by the certifying agency were perjury under section 162.065 of the Revised Statutes (ORS) and peonage (second degree involuntary servitude) under ORS section 163.263. *See Form I-918 Supplement B*, Part 3.3. Because the petitioner must show that she is the victim of a qualifying crime investigated or prosecuted by the certifying agency, *see* 8 CFR § 214.14(b)(3), (c)(2)(i), she cannot establish that she was the victim of trafficking and we can only consider whether or not she is the victim of perjury or involuntary servitude.

The petitioner has failed to meet her burden showing that she is the victim of the qualifying crimes of perjury or involuntary servitude or crimes that are substantially similar to these qualifying crimes. First, under ORS section 162.065(1), “[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.” Here, the certifying official stated that “[t]he criminal activity being investigated is perjury regarding [redacted] and the I-9 form.” *Form I-918 Supplement B*, Part 3.5. The petitioner contends that [redacted] “is being investigated for perjuring I-9 forms due to providing false documentation to undocumented immigrants.” *Letter in Response to RFE* at 8. Because the petitioner procured work by providing false documents that she purchased, *see Personal Statement of the Petitioner*, dated April 1, 2011, she also is 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.”).

Second, the petitioner has not met her burden of showing that she is the victim of involuntary servitude under state or federal law. Under ORS section 163.263(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.

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).

Here, the certifying official stated that "[redacted] was using perjury in order to obtain labor, thereby committing involuntary servitude." *Form I-918 Supplement B*, Part 3.5. The petitioner contends through counsel that she was forced to work for [redacted] because of the fear that if she did not work, [redacted] would withhold a necessity of life. *See Letter in Response to RFE*. Additionally, the petitioner, through counsel, contends that she was forced to work by [redacted] abuse or threatened abuse of the law or legal process. *See Letter in Response to RFE* at 6. These contentions lack merit.

First, the record does not show that [redacted] abused or threatened to abuse the law or the legal process as a means to force the petitioner to work for the company, as contemplated by ORS section 163.263(1)(a). To the extent that [redacted] abused the law by illegally hiring unauthorized workers and by subjecting them to health and safety violations, the evidence does not show that these illegal practices were employed to secure the petitioner's labor, as she stated that she

voluntarily chose to work for the company.

Second, the record does not show that [REDACTED] forced the petitioner to work by instilling in her a fear that the company would withhold from her the necessities of life, as contemplated by ORS section 163.263(1)(e). The petitioner claims that her supervisors yelled at her and her coworkers that if they did not like working at [REDACTED] they could “get out of here.” *Personal Statement of the Petitioner at 1*. She also indicates a male supervisor would follow her to the bathroom to make sure she entered the bathroom. However, the evidence does not show that these threats instilled in the petitioner a fear that [REDACTED] would withhold lodging, food, clothing, or other necessities from her, such that she felt forced to work for the company.

Third, the evidence does not show that the petitioner was forced to work for [REDACTED] by the use or threat of: (1) physical restraint; (2) physical injury; or (3) coercion through law or the legal process, as required under federal law. *See Kozminski*, 487 U.S. at 952. Specifically, the petitioner describes the poor working conditions at [REDACTED] that caused harm to her hands, arms and eyes, but she does not contend that [REDACTED] officials forced her to work by physically restraining or injuring her, or threatening her with these harms. To the contrary, the petitioner stated that her supervisors would yell: “If you don’t want to work, go home! There are a lot of people who need work. If you don’t like it, get out of here!” *Personal Statement of the Petitioner at 1*. Although the petitioner states that she was constantly terrified while working at [REDACTED] she does not attribute her fear to any threats by [REDACTED] officials to report her to immigration law enforcement authorities or that [REDACTED] otherwise used or threatened to use the legal process to force her into servitude.

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.