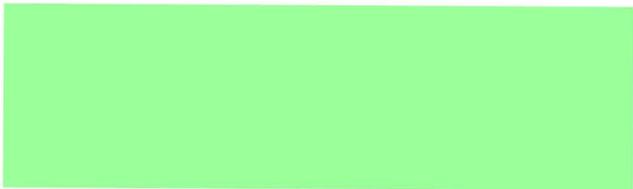


(b)(6)

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

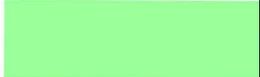


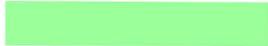
U.S. Citizenship
and Immigration
Services



Date: **MAR 11 2013**

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:

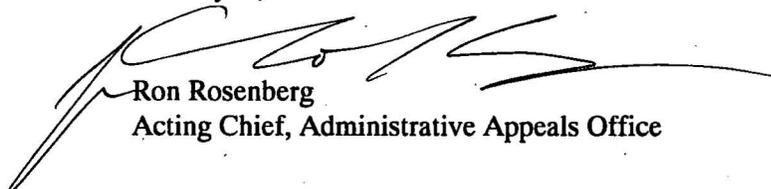


INSTRUCTIONS:

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 AAO inappropriately applied the law 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 in accordance with the instructions on 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 determined that the petitioner did not establish that he was a victim of qualifying criminal activity, and therefore could not show that he met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, the petitioner's representative submits a brief and copies of previously submitted evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act defines qualifying criminal activity as:

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 term ‘any similar activity’ refers to 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).

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). 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).

Facts and Procedural History

The petitioner is a native and citizen of Korea who entered the United States on February 20, 2007 as a nonimmigrant worker. The petitioner was placed into removal proceedings before the Miami, Florida Immigration Court in 2009 after he overstayed his nonimmigrant visa. The petitioner remains in proceedings before the Miami Immigration Court; however, the Immigration Judge administratively closed the petitioner's case on May 17, 2011 pending adjudication of this petition.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on February 3, 2011. On

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June 17, 2011, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of an organized scheme to defraud and the practice of law while disbarred, which she claims are similar to the qualifying crimes of perjury, obstruction of justice, and extortion.

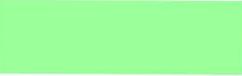
Claimed Criminal Activity

According to the petitioner, in 2004 he hired the now disbarred attorney, [REDACTED] to represent him in obtaining an H1B visa and lawful permanent residence through a Form I-140, Petition for Immigrant Worker. The petitioner stated that he and his wife paid [REDACTED] \$11,000, but that eventually she stopped responding to their inquiries and would not give them a straight answer about their case. In July, 2010, the petitioner and his wife discovered that they were in immigration proceedings. The petitioner recounted that he and his wife later found out that [REDACTED] failed to file the proper paperwork for their case, lied to them, and filed immigration documents that the petitioner and his wife did not sign. They also learned that [REDACTED] had been disbarred but that she had continued to illegally practice law.

Qualifying Criminal Activity

In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] of the Florida State Attorney's Office (certifying official). The certifying official listed the criminal acts at Part 3.1 as "other", and then specifically listed "theft, fraud, & UPL [the unauthorized practice of law]." At Part 3.3, the certifying official listed the statutory citations of the crimes as Florida Statutes (Fla. Stat.) section 454.31 (practicing law while suspended/disbarred) and Fla. Stat. section 817.034(4)(A)(3) (organized fraud). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that [REDACTED] represented the petitioner and continued to practice law after being suspended and disbarred. The certifying official asserted that the petitioner relied on [REDACTED] misrepresentations and that he paid in excess of \$5,000 to [REDACTED]. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner and his wife's immigration status was compromised by following [REDACTED] advice and that the petitioner paid over \$5,000 to [REDACTED] when she in fact had no right to collect the funds from the petitioner.

Under the Florida Penal Code, practicing law while suspended/disbarred is defined as follows:



Any person who has been knowingly disbarred and who has not been lawfully reinstated or is knowingly under suspension from the practice of law by any circuit court of the state or by the Supreme Court of the state who practices law in this state or holds himself or herself out as an attorney at law or qualified to practice law in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. Ann. § 454.31 (West 2013).

Under the Florida Penal Code, fraud is defined as follows:

* * *

(3) Definitions.--As used in this section, the term:

* * *

(d) "Scheme to defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

* * *

Fla. Stat. Ann. § 817.034 (West 2013).

The particular crimes that were certified in this case are not within the list of qualifying crimes nor are they substantially similar to any of the 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). In this case, counsel states that the petitioner was the victim of [redacted] perjury, obstruction of justice and extortion, as those offenses are defined in the United States Code (U.S.C.). Counsel claims that [redacted] actions involved perjury, obstruction of justice and extortion; however, the proper inquiry is not a characterization of the underlying facts, but a statutory analysis comparing the nature and elements of the offenses investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9).

Under 18 U.S.C. § 1621, perjury occurs when:

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true[.]

18 U.S.C. § 1621 (West 2013).¹

No elements of Fla. Stat. Ann. § 454.31 or Fla. Stat. Ann. § 817.034 are similar to perjury under 18 U.S.C. § 1621. The statutes under which [REDACTED] was prosecuted involve knowingly practicing law when disbarred or suspended and a course of conduct used to defraud with an intent to obtain property from another by false pretenses. Perjury involves providing false testimony under oath, or providing information under penalty of perjury when the provider willfully subscribes as true something that he does not believe to be true.

Under 18 U.S.C. § 1505, obstruction of proceedings before departments, agencies, and committees occurs when:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . .

18 U.S.C. § 1505 (West 2013).

No elements of Fla. Stat. Ann. § 454.31 or Fla. Stat. Ann. § 817.034 are similar to obstruction of justice under 18 U.S.C. § 1505. Obstruction of justice involves misrepresenting information or using threats or force to impede or obstruct a pending proceeding before a U.S. department, agency or committee. Neither of the statutes under which [REDACTED] was prosecuted involves willfully withholding, misrepresenting, altering, or by other means falsifying any information in a government proceeding or the use of threats or force – essential elements in the federal obstruction of justice statute.

¹ In her brief on appeal, counsel incorrectly cites to U.S.C. § 1001 in the section on perjury. U.S.C. § 1001 does not, however, define perjury, but rather describes “Statements or Entries Generally” under the chapter on Fraud and False Statements.

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Under 18 U.S.C. § 1951, extortion is defined as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” (West 2013).

No elements of Fla. Stat. Ann. § 454.31 or Fla. Stat. Ann. § 817.034 are similar to extortion under 18 U.S.C. § 1951. None of the statutes under which [REDACTED] was persecuted involve acquiring the property of another, with his consent, through force, violence, fear, or under color of official right, as is necessary for a conviction for extortion under federal law.

We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that his office or any other law enforcement authority investigated or prosecuted [REDACTED] for perjury, obstruction of justice, extortion, or any similar crime.

Furthermore, to establish that he was the victim of the qualifying crime of perjury or obstruction of justice in these proceedings, the petitioner must demonstrate that the perpetrator committed the offense, 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).

The evidence in the record does not demonstrate that [REDACTED] committed perjury or obstruction of justice as a way to avoid or frustrate efforts by law enforcement personnel to bring her to justice for other criminal activity, or as a means to further her abuse or exploitation over the petitioner through manipulation of the legal system. The record lacks evidence that [REDACTED] was engaged in any other criminal activity at the time, and there is no basis to conclude that any commission of perjury or obstruction of justice was done to avoid or frustrate any ongoing law enforcement investigation of her. The record also fails to show that [REDACTED] committed a perjury offense or obstructed justice to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system.

Both the statute and the regulation at 8 C.F.R. § 214.14(a)(9) allow for “any similar activity” to be considered a qualifying crime when the nature and elements of a particular criminal offense are substantially similar to one of the criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Here, the petitioner has not demonstrated that the criminal offenses of which he was a victim, unauthorized practice of law and fraud, are substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including perjury, obstruction of justice, or extortion. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

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Substantial Physical or Mental Abuse

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if his qualifying victimization was established, however, the record does not show that he suffered substantial physical or mental abuse as a result.

In his October 5, 2010 statement that was submitted when filing his Form I-918 U petition, the petitioner recounted his interactions with [REDACTED] and stated that she has ruined his life. The petitioner indicated that he and his wife paid [REDACTED] approximately \$11,000 and that they are now in removal proceedings. He stated that he and his family are under extreme stress and that their life is a nightmare. In his September 1, 2011 affidavit, the petitioner added that he and his wife are experiencing extreme financial, physical and emotional hardship as a result of their victimization, and that the criminal acts have affected his and his wife's health as they are both battling anxiety and depression. On his Form I-918 Supplement B, the certifying official listed the known injuries as that the petitioner and his wife's immigration status was compromised by following [REDACTED] advice and that the petitioner paid over \$5000 to [REDACTED]

We recognize the petitioner's fear about his future status in the United States and do not discount how those emotions have affected his life. However, the petitioner's affidavit does not contain probative details of the harm he claims to have suffered. While he recounts that he has been negatively affected and suffered financial losses, the petitioner has not provided any further information or other evidence that would indicate that any abuse he suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Remaining Eligibility Criteria

The petitioner's failure to establish that the requisite victimization and resultant substantial abuse prevents him from meeting any of the statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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