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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



Date: **MAY 23 2013**

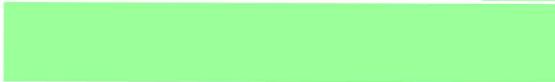
Office:

VERMONT SERVICE CENTER



IN RE:

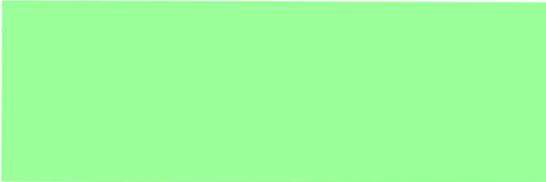
PETITIONER:



APPLICATION:

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 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 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 because the petitioner did not establish that: (1) she has been the victim of qualifying criminal activity; (2) she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; (3) she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity; and (4) she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. On appeal, counsel submits a brief.

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; stalking; 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; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

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

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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.

(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 eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by U.S. Citizenship and Immigration Services (USCIS). USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who claims to have entered the United States on June 13, 1992 without inspection. The petitioner filed the instant I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 26, 2010. On August 20, 2010, the director issued a Request for Evidence (RFE) requesting that the petitioner submit additional evidence that she was the victim of a qualifying crime and that she suffered substantial physical and mental abuse. In addition, the director requested the petitioner to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive her ground of inadmissibility. Counsel responded to the RFE with a Form I-192 and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the

petition and the petitioner's Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the director erred in denying the petitioner's Form I-918 U petition because the immigration fraud perpetrated against her made her a victim of perjury, false imprisonment, and extortion.

Claimed Criminal Activity

In her July 2, 2010 statement submitted with the initial Form I-918 U petition, the petitioner states that in August 2002, she and her husband sought the services of [REDACTED] owned by [REDACTED] to help legalize their status in the United States. She states that during their initial consultation with [REDACTED] they were told that they were eligible for lawful permanent residence status, and paid an initial payment of \$500. Over the next couple of months, they paid a total of \$3,000. Her husband was given blank forms to sign, and they were told that the office would fill them out later. They received notification about a fingerprint appointment and an interview notice for an asylum interview, and confronted [REDACTED] about the appointments. According to the petitioner, [REDACTED] told them that it was normal procedure and that he would withdraw her husband's asylum application. In October 2002, they appeared before the immigration court by themselves, and by the time of their hearing in March 2003, [REDACTED] was closed and under investigation. The petitioner states that they made a mistake in trusting [REDACTED]

The Form I-918 Supplement B that the petitioner submitted is signed by Assistant District Attorney [REDACTED] California District Attorney's Office (certifying official), on July 8, 2010. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as perjury. In Part 3.3, the certifying official refers to California Penal Code (CPC) §§ 487.1 and 127, grand theft and perjury, respectively, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he states "see attached immigration judge's order of removal." [REDACTED] leaves blank Part 3.6 regarding any known injuries to the petitioner.

Grand Theft is not Substantially Similar to a Qualifying Crime or Criminal Activity

The crime of grand theft is not specifically listed as a qualifying 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). Thus, the nature and elements of the grand theft offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under California Penal Code, 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 § 487 (West 2002). In his denial decision, the director concluded that grand theft was not a crime enumerated at section 101(a)(15)(U)(iii) of the Act. On appeal, counsel does not dispute the director’s conclusion that grand theft is not a qualifying crime. Accordingly, grand theft under CPC § 487 is not a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The Petitioner was Not a Victim of Perjury

Under California Penal Code § 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 perjury so procured.” (West 2013). Perjury under CPC § 118 is defined as follows:

- (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

- (b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

Cal. Penal Code § 118 (West 2013).

Counsel claims that [REDACTED] and his employees committed perjury by signing under penalty of perjury fraudulent immigration applications that were then submitted to United States Citizenship and Immigration Services (USCIS). However, to establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must also demonstrate that [REDACTED] procured her to commit perjury, at least in principal part, as means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring it to justice for other criminal activity; or (2) to further its 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). Counsel claims that [REDACTED] and his employees threatened the petitioner by telling her that she would jeopardize her immigration case by not continuing to use their services, and

this establishes that [REDACTED] and his employees “committed the crimes in order to further abuse, exploit, and exert undue control” over the petitioner “through the manipulation of the legal system.”

The evidence in the record does not demonstrate that the petitioner perjured herself. The petitioner was listed as a derivative on her husband’s asylum application; she did not sign the application and did not testify that [REDACTED] had her sign a blank immigration form. Thus, the evidence does not establish that the petitioner perjured herself by signing an application for an immigration benefit that contained false information.

Even if the evidence did demonstrate that [REDACTED] suborned the petitioner to commit perjury, she has not demonstrated that the perjury was done to avoid or frustrate efforts by law enforcement personnel to bring [REDACTED] to justice for other criminal activity. The record indicates that the Orange County District Attorney’s Office filed a criminal complaint against [REDACTED] and his employees in 2003, over a year after the petitioner’s husband signed his asylum application. As [REDACTED] and his employees were charged with grand theft through immigration fraud a year after the petitioner and her husband retained their services, there is no reason to believe that suborning the petitioner to commit perjury would avoid or frustrate the district attorney’s prosecution efforts, as the crime would only provide further evidence of [REDACTED] malfeasance. While the record shows that the petitioner was exploited by [REDACTED] the exploitation resulted from the initial fraud, not from further perjury under CPC § 118. 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) of the Act.

The Petitioner was Not a Victim of False Imprisonment or Extortion

Counsel claims that the petitioner was the victim of false imprisonment because the employees of [REDACTED] would meet and transport the victims to their removal proceeding, and they prohibited them from seeking other counsel. In the Form I-290B, counsel also claims that [REDACTED] extorted money from the victims “in order to keep their cases moving through the immigration court system.” Although the crimes of false imprisonment and extortion are listed at section 101(a)(15)(U)(iii) of the Act, the record does not establish that false imprisonment and extortion were investigated or prosecuted. The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of perjury; he presented no evidence that he or any other law enforcement entity investigated false imprisonment and/or extortion. The only crime certified at Part 3.3 of the Form I-918 Supplement B was grand theft and perjury. The petitioner is, therefore, not the victim of the qualifying crimes of false imprisonment and/or extortion or any other qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the

Act. Even if the petitioner could establish that she was the victim of a qualifying crime or criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

The petitioner states that she is "sad and disappointed." In her October 15, 2010 statement, the petitioner claims that she is still struggling to recover from her experience with [REDACTED]. She states that she and her husband are suffering financially and living in fear of "not knowing what is going to happen tomorrow." She states her "days are full of anxiety, stress, [and] depression," which resulted in her having a miscarriage. In a psychological evaluation dated October 31, 2010, [REDACTED] indicates that the petitioner's current symptoms of depression and anxiety could develop into major depressive disorder and generalized anxiety disorder. [REDACTED] recommends that the petitioner attend counseling and consult a psychiatrist for possible medication in order to deal with the crime committed against her and her high levels of stress. The record contains no evidence that the petitioner followed-up on [REDACTED] recommendations.

While we do not minimize what the petitioner experienced as a result of the crimes perpetrated by [REDACTED] the overall evidence does not establish that she has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has not demonstrated that she was the victim of qualifying criminal activity, and she consequently fails to meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. 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.