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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: **NOV 15 2013** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]
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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal, and the matter is again before the AAO on motion. The motion to reopen will be granted. The appeal will remain dismissed and the underlying 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.

The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petitioner timely filed an appeal with the AAO. The AAO dismissed the appeal. With the present motion, the petitioner submits additional evidence.

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: . . . perjury; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order

to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, United States Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

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 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."

Pertinent Facts and Procedural History

As the facts and procedural history were adequately documented in our previous decision, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of Mexico who entered the United States on June 1, 1992 without inspection. On July 26, 2010, the petitioner filed a Form I-918 U petition with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The director denied the petition because the petitioner failed to establish that she was the victim of a qualifying crime, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petitioner timely appealed. In its May 23, 2013 decision on appeal, incorporated here by reference, the AAO found that because the petitioner did not demonstrate that she was the victim of qualifying criminal activity, she failed to establish the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. The AAO also determined that even if she had been the victim of a qualifying crime, she had not shown that she had suffered substantial physical or mental abuse.

On motion, counsel claims that the petitioner suffered a physical injury, a miscarriage, as a result of her victimization, and submits new medical documents in support of his claim. In addition, he states the petitioner is the victim of perjury and reiterates the claims he made in his October 30, 2012 appeal brief to the AAO. Counsel's submission meets the requirements for a motion to reopen, but not a motion to

reconsider. *See* 8 C.F.R. § 103.5(a)(2)-(3). Counsel fails to establish that the AAO's May 23, 2013 decision was based on an incorrect application of law or USCIS policy as required, and he does not support his contentions with any pertinent precedent decisions. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

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 initially paid \$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 asylum interview, and confronted Mr. [REDACTED] about the asylum claim. According to the petitioner, Mr. [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 Mr. [REDACTED] who stole their money. In her October 15, 2010 statement, the petitioner again describes her dealings with [REDACTED] and adds that she is still suffering the consequences of the situation, and that her economic situation is "in bad shape." She notes that she is anxious, stressed and depressed. The petitioner also states that she lost her house and suffered a miscarriage as a result of the immigration proceedings against her.

The Form I-918 Supplement B that the petitioner submitted was 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." Mr. [REDACTED] leaves blank Part 3.6 regarding any known injuries to the petitioner.

The Petitioner was Not a Victim of Perjury

On motion, counsel claims that [REDACTED] filed an asylum application for the petitioner and her husband even though they were not eligible for that form of relief, and thus, "purposely engaged in perjury." He states the petitioner and her husband did not request that [REDACTED] file an asylum application on their behalf, and they committed perjury "by attesting that the application was filed at the behest of" the petitioner and her husband. 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).

To establish that the petitioner was the victim of the qualifying crime of perjury in these proceedings, she must demonstrate that Mr. [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).

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 [REDACTED] District Attorney's Office filed a criminal complaint against Mr. [REDACTED] and his employees in 2003, over a year after the petitioner's husband signed his asylum application. As Mr. [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.

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).

Counsel states that the petitioner suffered a miscarriage as a result of her victimization. The petitioner states her "days are full of anxiety, stress, [and] depression," which resulted in her having a miscarriage. Medical records submitted on motion establish that the petitioner suffered a miscarriage on or about September 14, 2010, and that she was diagnosed with anxiety at a psychiatric appointment on September 18, 2012. In a psychological evaluation dated October 31, 2010, Dr. [REDACTED] confirms the petitioner lost her house and suffered a miscarriage as a result of her struggles with her immigration status, and indicates that the petitioner's current symptoms of depression and anxiety could develop into major depressive disorder and generalized anxiety disorder if she is deported to Mexico.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of her victimization. Although Dr. [REDACTED] indicates that the petitioner is suffering symptoms of depression and anxiety, she does not directly link these symptoms to her victimization by [REDACTED]. She indicates that the petitioner is also suffering because of her immigration status in the United States. In addition, the medical records do not establish that the petitioner's miscarriage was a result of her victimization. The petitioner's miscarriage occurred in 2010, eight years after her victimization by [REDACTED] in 2002. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that she suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has failed to establish that she was the victim of a qualifying crime or criminal activity or that she suffered resultant substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

The appeal will remain dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish

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eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The appeal remains dismissed and the petition remains denied.