

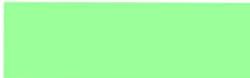


U.S. Citizenship
and Immigration
Services

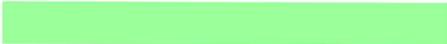
(b)(6)

Date: **OCT 15 2013**

Office: VERMONT SERVICE CENTER

FILE: 

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)

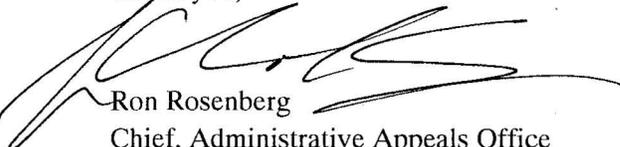
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,


Ron Rosenberg
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) 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 he was the victim of qualifying criminal activity and he consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a letter.

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;

(ii) 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

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

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;

(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.

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.

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 May 1, 1992 without inspection. The petitioner filed the instant Form 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 23, 2011, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he 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 his ground of inadmissibility. Counsel responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility.

Accordingly, the director denied the Form I-918 U petition. 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 him made him a victim of perjury, false imprisonment, and extortion.

Claimed Criminal Activity

In his July 2, 2010 statement submitted with the initial Form I-918 U petition, the petitioner recounts that in August 2002, he and his wife sought the services of [REDACTED] owned by [REDACTED] to help legalize their status in the United States. He states that during their initial consultation with [REDACTED] they were told that they were eligible for lawful permanent residence status, and made an initial payment of \$500. Over the next couple of months, they paid a total of \$3,000. The petitioner was given blank forms to sign, and he and his wife 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 the petitioner's asylum application. In October 2002, they appeared before the immigration court by themselves, and by the time of their next 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.

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.

Grand Theft is not a Qualifying Crime or Criminal Activity

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). 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). On appeal, counsel does not dispute the director's conclusion that grand theft is not a qualifying crime at section 101(a)(15)(U)(iii) of the Act and counsel makes no claim that grand theft is substantially similar to any qualifying crime. Although the record indicates that the petitioner

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was the victim of grand theft under CPC § 487, that offense 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).

On appeal, counsel claims that Mr. [REDACTED] and his employees committed perjury by signing under penalty of perjury fraudulent immigration applications that were then submitted to USCIS. However, to establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must also demonstrate that Mr. [REDACTED] procured him 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 Mr. [REDACTED] and his employees threatened the petitioner and his wife that they would jeopardize their immigration cases if they did continue to use [REDACTED]'s services.

The record does not demonstrate that [REDACTED] suborned the petitioner to commit perjury to avoid or frustrate efforts by law enforcement personnel to bring it 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 signed his asylum application. As

Mr. [REDACTED] and his employees were charged with grand theft through immigration fraud a year after the petitioner 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]'s malfeasance.

Counsel has also not established that [REDACTED] committed a perjury offense to further abuse, exploit or exert undue control over the petitioner through the manipulation of the legal system. Apart from having the petitioner sign a blank asylum application and filing such application with USCIS, the relevant evidence does not indicate that any of [REDACTED]'s subsequent dealings with the petitioner involved perjury. The record shows that [REDACTED] filed the frivolous asylum application shortly after being retained by the petitioner and, thus, the perjury initiated the harm, it did not further any existing abuse or exploitation of the petitioner. 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. Accordingly, [REDACTED] did not suborn the petitioner's perjury, in principal part, as a means to further its exploitation, abuse or undue control over the petitioner by its manipulation of the legal system. The petitioner is, therefore, not the victim of the qualifying crime of perjury 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. On the Form I-290B, Notice of Appeal, counsel also claims that [REDACTED] extorted money from the victims "in order to keep their cases moving through the immigration court system." Although false imprisonment and extortion are qualifying crimes listed at section 101(a)(15)(U)(iii) of the Act, the certifying official only indicated that the petitioner was the victim of perjury and there is no evidence that the certifying agency or any other law enforcement entity investigated false imprisonment or extortion inflicted upon the petitioner. 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 he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result and as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that he was the victim of a qualifying crime or criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his 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 he is “sad and disappointed.” In his November 7, 2011 statement, the petitioner claims that he still has not recovered from his experience with [REDACTED]. He states that he and his wife are suffering financially and living in fear of “not knowing what is going to happen the next day.” He states his life is “full of anxiety, stress, depression, and sadness.” He also claims that he suffers from a back condition, and his wife had a miscarriage in September 2010. In a psychological evaluation dated October 25, 2011, Dr. [REDACTED] indicates that the petitioner’s current symptoms of depression and anxiety could develop into major depressive disorder. Dr. [REDACTED] states that the petitioner cannot “tolerate any further stressors at this time.”

While we do not minimize the impact of [REDACTED]’s offenses upon the petitioner and his family, the relevant evidence does not establish that he 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 he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, and he consequently fails to meet the statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

The appeal will be 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 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 appeal is dismissed.