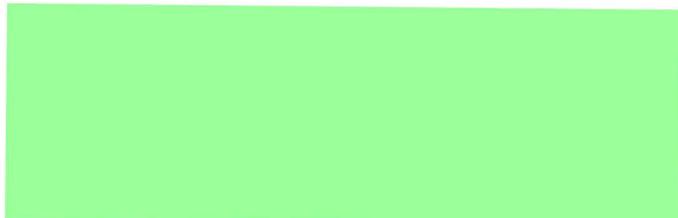


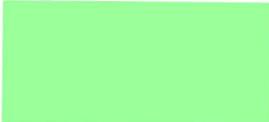
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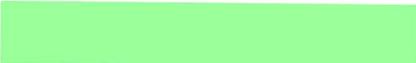
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

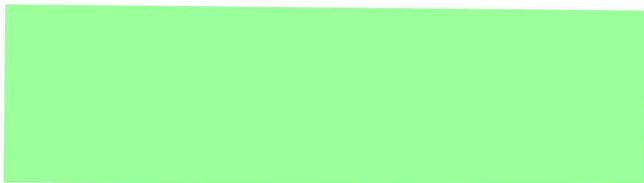


Date: **JAN 31 2014** Office: VERMONT SERVICE CENTER FILE: 

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 (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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted. The appeal will remain 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 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 petition was denied accordingly. On motion, counsel submits a brief.

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 lists qualifying criminal activity and states, in pertinent part:

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 ‘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, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of Guyana who last entered the United States on May 29, 1996 as a nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on July 5, 2011, which the director denied on September 4, 2012. On appeal, counsel contended that the perpetrator committed perjury and procured the petitioner to commit perjury and that supporting evidence indicated that the perjury was included under the charge of scheme to defraud.

On motion, counsel asserts, in part, that the qualifying crime occurred during the commission of the non-qualifying crime that was certified, and that the perjury was central to the criminal activity

investigated and prosecuted.

Claimed Criminal Activity

As recounted in her May 2011 affidavit, in February of 2009, the petitioner hired [REDACTED] to represent her in obtaining lawful permanent residence. Mr. [REDACTED] told her she had to file an asylum application in order to obtain lawful permanent residence, and although the petitioner informed him that she did not fear persecution, he filled out the form and both the petitioner and Mr. [REDACTED] signed the asylum application. After Mr. [REDACTED] filed the application, he told the petitioner she had to pay another fee to expedite the case, and another fee to obtain a waiver for non-payment of taxes. The petitioner learned that Mr. [REDACTED] was not legitimate, and an attorney reported him to the Manhattan District Attorney, who investigated and prosecuted the case. The petitioner provided what information she had, testified before the grand jury, and was prepared to testify at trial but Mr. [REDACTED] agreed to a plea bargain before trial.

Analysis

In its prior decision, the AAO determined that the petitioner had not established that she was the victim of qualifying criminal activity. On motion, counsel contends that perjury, a qualifying crime, occurred during the commission of the crime that was certified on the Form I-918 Supplement B, scheme to defraud. In support of her 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 Office of the District Attorney of New York County (certifying official) that listed the statutory citations of the crimes investigated or prosecuted as New York Penal Law (N.Y. Penal Law) sections 190.65(1)(b) (scheme to defraud), 155.30 (grand larceny), 110/155.30(1) (attempted grand larceny), and New York Judicial Law section 478 (practicing or appearing as attorney-at-law without being admitted and registered). On motion, counsel notes that the certifying official indicated that “[t]he filling out and filing of the I-589 under penalties of perjury is central and pivotal to the defendant’s ability to perpetrate the fraud in this case. . . . [T]he perjury aspect of these [sic] case . . . was extremely important and is represented in the indictment by the Scheme to Defraud charge.” As the certifying official indicated that perjury was investigated as part of the scheme to defraud charge, we withdraw our prior determination to the contrary.

Next, to establish that she was the victim of the qualifying crime of perjury 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 him to justice for other criminal activity; or (2) to further his 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). Here, counsel focuses on the second prong of the regulation at 8 C.F.R. § 214.14(a)(14)(ii), stating that the term “further” should be interpreted as helping to progress or advance.

As stated in our prior decision, the petitioner's exploitation resulted from the initial fraud and the perpetrator's subsequent misleading interactions with the petitioner, and there is no evidence to show that the perpetrator committed perjury in principal part to further his exploitation, abuse or undue control over the petitioner by his manipulation of the legal system. Though counsel asserts that there are various definitions of the word "further," each of these definitions implies that at the time the perjury occurred, it was committed in order to "advance" or "progress" the exploitation or undue control that was already occurring. Here, the perjury was not committed in order to further, advance, or progress the exploitation, but rather it was the first step in initiating the perpetrator's fraud. Furthermore, there is no evidence that the perpetrator had the petitioner sign the Form I-589 in order to exploit or exert undue control over her, as opposed to using the Form I-589 as a means to get the petitioner placed into removal proceedings so that she could apply for residency, for example, through cancellation of removal for nonpermanent residents, or another form of relief from removal. As such, the petitioner has not shown that she was the victim of the qualifying crime of perjury or any other qualifying criminal activity, as required by section 101(a)(15)(U) of the Act.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. She, therefore, also fails to meet the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(II)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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