

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

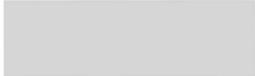


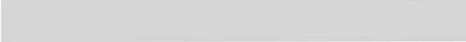
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: APR 01 2015

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The matter is now before the Administrative Appeals Office 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 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 appeals with a brief and additional 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[.]

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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); 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. 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

The petitioner, a native and citizen of Mexico, represents that she last entered the United States in 2004 by presenting a false travel document to a U.S. immigration officer. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 29, 2013. The director subsequently issued a Request for Evidence (RFE) of qualifying criminal activity, among other issues. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility and denied the Form I-918 U petition. In her decision, the director found that the petitioner failed to establish that she was the victim of qualifying criminal activity, and was consequently precluded from establishing eligibility for the other criteria. The petitioner timely appealed.

On appeal, the petitioner asserts that she was a victim of mail fraud, bank fraud, and wire fraud, which

she claims are substantially similar to perjury and fraud in foreign labor contracting. She also contends that the perpetrator of the crime of which she was a victim likely committed perjury in the course of his commission of mail fraud, bank fraud, and wire fraud, and he also committed perjury at his criminal trial, at which the petitioner served as a witness.

Claimed Criminal Activity

As recounted in the September 3, 2002, "Government's Trial Brief," the September 24, 2002, Transcript of Trial Proceedings, and the petitioner's April 22, 2013, personal affidavit, the petitioner was a victim of a scheme whereby [REDACTED] and his wife purchased and resold homes using unsuspecting straw buyers who spoke limited English and were thus unaware of the contents of the papers they were signing. In 1997 or 1998, Mr. [REDACTED] approached the petitioner and offered to help her improve her credit so that she could achieve home ownership at some point in the future. Mr. [REDACTED] indicated that by helping other individuals, she would accumulate "points" that would subsequently help her buy her own home. Mr. [REDACTED] came to the petitioner's apartment on several occasions and asked her to sign documents that were entirely in English. After several visits and several signatures, Mr. [REDACTED] disappeared. Several years later, investigators informed the petitioner that a home had been purchased in her name, and the home had since been foreclosed due to a defaulted mortgage. The petitioner testified against Mr. [REDACTED] and his spouse on September 24, 2002, and was cross-examined by Mr. [REDACTED] who was representing himself. The petitioner indicated that due to the damage to her credit from Mr. [REDACTED] crimes, she has been unable to purchase a home, and is worried she will have difficulty obtaining rental housing. The petitioner asserted that she has been affected financially and emotionally by the fraud crimes perpetrated against her.

The Form I-918 Supplement B was signed by U.S. District Court Judge [REDACTED] (certifying official) on March 8, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as perjury, and "Other: Fraud/Forgery." However, the statutory citations at Part 3.3 do not include perjury.¹ Rather, Part 3.3 indicates investigation or prosecution of the following crimes: 18 U.S.C. § 371 (Conspiracy), 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), and 18 U.S.C. § 1344 (Bank Fraud). At Part 3.5, the certifying official asserted that the petitioner was a victim of a real estate fraud scheme, and that the perpetrator had been convicted of conspiracy, mail fraud, wire fraud, and bank fraud. The certifying official did not certify that the petitioner was a victim of perjury, or that perjury had been investigated and/or prosecuted.

Analysis

The crimes that the certifying official identified on the Form I-918 Supplement B at Part 3.3 as having been investigated or prosecuted (conspiracy, mail fraud, wire fraud, and bank fraud) are not

¹ We determine, in our sole discretion, the evidentiary value of a Form I-918, Supplement B. 8 C.F.R. 214.14(c)(4).

specifically listed as 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). Thus, the nature and elements of these offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

The petitioner asserts that the investigated and prosecuted statutes are substantially similar to fraud in foreign labor contracting, which is defined at 18 U.S.C. § 1351 as follows:

(a) Work Inside the United States.--Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Work Outside the United States.--Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment performed on a United States Government contract performed outside the United States, or on a United States military installation or mission outside the United States or other property or premises outside the United States owned or controlled by the United States Government, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment, shall be fined under this title or imprisoned for not more than 5 years, or both.

18 U.S.C.A. § 1351 (West 2015).

On appeal, the petitioner indicates that fraud in foreign labor contracting involves intent to defraud, making it a similar activity to the investigated and prosecuted crimes in the instant matter. However, the regulation at 8 C.F.R. § 214.14(a)(9) requires that the “nature and elements” of the investigated statute be “substantially similar” to a statutorily enumerated crime to qualify as a similar activity. Thus, a single similar element is insufficient to render an investigated crime substantially similar to a statutorily enumerated offense. Here, both subsections of fraud in foreign labor contracting contain as an element the recruitment, solicitation, or hiring of a person outside the United States. None of the investigated or prosecuted crimes listed by the certifying official in the Supplement B (conspiracy, mail fraud, wire fraud, and bank fraud) require the recruitment, solicitation, or hiring of a person outside the United States. Consequently, none of the investigated or prosecuted crimes are substantially similar to fraud in foreign labor contracting.

The petitioner also asserts that the investigated and prosecuted statutes are substantially similar to the qualifying offense of perjury. Perjury is defined at 18 U.S.C. § 1621 as follows:

Whoever—

(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;

is guilty of perjury

18 U.S.C.A. § 1621 (West 2015)

None of the crimes enumerated by the certifying official in the Supplement B require testimony or declaration under oath or penalty of perjury to a material matter which the testifier does not believe to be true as elements. Even if the perpetrator did commit perjury in the course of the commission of his other crimes or at trial, the relevant inquiry is whether the nature and elements of the specific crimes investigated or prosecuted are “substantially similar” to one of the enumerated crimes, not whether an enumerated crime may have also occurred in the commission of the investigated or prosecuted crimes. See 8 C.F.R. § 214.14(a)(9). Additionally, as stated above, the relevant inquiry is not fact-based.

Even if the prosecuted crimes were found to be substantially similar to perjury, a victim of perjury must additionally 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). On appeal, the petitioner asserts that Mr. [REDACTED] co-conspirator committed perjury to further the investigated crimes by fraudulently filing a bankruptcy petition in Federal court. However, the record does not indicate that the bankruptcy petition was filed on behalf of the petitioner, and thus the petitioner is not personally a victim of that particular criminal act. The petitioner also asserts that by fraudulently submitting a Federal Housing Administration (FHA) loan application on her behalf, Mr. [REDACTED] and his co-conspirators committed perjury to further their abuse of the petitioner through manipulation of the legal system. However, it is apparent that this criminal conduct was an integral part of the original scheme to fraudulently purchase the home, and not to “further” abuse the

petitioner. In the alternative, the petitioner asserts that Mr. [REDACTED] committed perjury at his trial by repeating untrue facts during testimony and during his cross-examination of the petitioner, to frustrate efforts to prosecute him or otherwise bring him to justice. Again, while there may be a factual basis for the petitioner's assertions, Mr. [REDACTED] potential perjury at trial was not the certified crime. Rather, the Supplement B references the underlying mail fraud, wire fraud, and bank fraud. The petitioner does not assert that Mr. [REDACTED] potential perjury was detected, investigated, or prosecuted by the relevant authorities. Nor does the petitioner suggest that she was helpful in an investigation of whether Mr. [REDACTED] committed perjury at his trial. In addition, the evidence does not indicate that the petitioner was victimized by Mr. [REDACTED] potential perjury at trial, but rather by the underlying crimes for which Mr. [REDACTED] was prosecuted. The petitioner has thus not established either that the certified crimes are substantially similar to perjury, or that the perjury from which she suffered harm was perpetrated as a means to frustrate efforts to prosecute the perpetrator for other criminal activity, or to further abuse her by manipulating the legal system.

Accordingly, 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)(I)–(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 appeal is dismissed. The petition remains denied.