U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C-

DATE: JUNE 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status. The Director concluded the Petitioner did not establish that he has been a victim of qualifying criminal activity. Accordingly, the Director determined the Petitioner did not establish that he meets the remaining eligibility criteria at 101(a)(15)(U)(i)(I)-(III) of the Act.[1]

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence. The Petitioner claims that he timely submitted his motion to reconsider, and there were reasonable grounds to conclude that his previous employer committed "repeated acts of perjury" resulting in direct harm to him.

Upon *de novo* review, we will dismiss the appeal.

I. 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 –

[1] The Director initially denied the petition as abandoned as the Petitioner did not respond to a request for evidence (RFE). The Director subsequently granted the Petitioner's motion to reopen but ultimately determined that the Petitioner did not overcome the grounds for denial of the Form I-918. The Applicant then filed a motion to reconsider which the Director denied as untimely.

> (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);
>
> . . . .

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 eligibility requirements for U nonimmigrant classification are explained in the regulation at 8 C.F.R. § 214.14(b), which states:

> *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 . . . .

Perjury is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act, which also provides that a qualifying criminal activity involves the specifically listed crimes "or any similar activity in violation of Federal, State, or local criminal law . . . ." In addition, the regulation at 8 C.F.R. § 214.14(a)(14) states, "*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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Timeliness of Motion to Reconsider

In her September 15, 2014, denial of the Form I-918, the Director properly notified the Petitioner that he had 33 days to file a motion or an appeal. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). U.S. Citizenship and Immigration Services received the Petitioner's motion to reconsider on October 22, 2014, 37 days after the decision was issued. On motion, the Petitioner argues that because the Director sent the denial to an incorrect address, the Petitioner did not receive it in a timely manner and did not have sufficient time to file the motion in the time prescribed. A review of the record before the Director indicates that the Petitioner provided an updated address in response to the Director's request for evidence. The Director's decision, however, was not sent to the updated address. Accordingly, we find the Petitioner has overcome the ground for denial of his motion to reconsider and we will therefore review the Director's underlying determination on the petition.

B. Certified Criminal Activity – Perjury

Assistant District Attorney [redacted] (certifying official), [redacted] in Texas, signed the Form I-918 Supplement B, U Nonimmigrant Status Certification, listing the criminal activity of which the Petitioner was a victim at part 3.1 as involving or being similar to perjury. In part 3.3, the certifying official referred to section 37.03 (aggravated perjury) of the Texas Penal Code as the criminal activity that was investigated or prosecuted. At part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official stated that the Petitioner did not receives wages from the restaurant where he worked, and during a hearing before the Texas Workforce Commission (TWC), the restaurant manager "perjured himself . . . ."

C. The Petitioner Has Not Established He Is a Victim of Perjury Under the Regulation

The Director found that crimes involving financial losses were not qualifying. This finding is not supported by the plain language of the Act which provides a specific list of qualifying crimes, which includes perjury, extortion, blackmail, and embezzlement, all of which often involve economic loss.

Under the regulation, to establish that he is a victim of perjury, the Petitioner must first demonstrate that he was directly and proximately harmed by the perpetrator because of the perjury, and then that the perpetrator committed the offense, at least in principal part to: (1) avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or (2) further the perpetrator's 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).

1. The "Direct and Proximate" Harm Requirement

In his statements, the Petitioner discussed having suffered anxiety and emotional distress, delayed dental care resulting in ongoing physical pain, and disrupted sleep patterns because of the restaurant manager's refusal to pay wages owed to him and during the subsequent TWC proceedings. He also stated that despite TWC's order issued in his favor, he did not receive the monies owed to him for almost two years, and "**but for** [the restaurant manager's] repeated acts of perjury, the case [before TWC] would not have dragged on for that long." The Petitioner further complains of difficulties in obtaining a driver's license and employment without legal permanent resident status. In addition, the Petitioner submitted letters from previous housemates, who indicated having lived with the Petitioner from January 2013 to January 2014, about five years after the TWC's order. Although they described the Petitioner as having difficulties sleeping, they relayed having been told by the Petitioner that his sleep disorder began with the dispute concerning the wages owed to him.

The Petitioner has sufficiently described the harm suffered and we do not minimize the impact this situation has had on his wellbeing. However, the Petitioner has not demonstrated that his emotional and physical harm are the direct result of the restaurant manager's perjury rather than harm suffered because of the failure to compensate him for wages owed. Accordingly, the Petitioner has not

established the direct and proximate harm required to establish he was a victim of perjury under the regulation.

2. The "Principal Part" Requirement

The Petitioner also has not established that the investigated any "other criminal activity" allegedly committed by the restaurant manager. The record includes a Contact Report issued by the recommending the 'open this case for investigation" based on the Petitioner's complaint that the restaurant manager "withheld wages illegally, lied under oath at TWC hearings and submitted fabricated information and documents." In a supplemental statement submitted in support of his Form I-918, the Petitioner indicated that the restaurant manager violated various provisions of the Texas Penal Code and the Texas Labor Code, including: fabricating evidence, failure to pay wages, and theft of service. However, the record does not establish any separate determination regarding his claims or that any further investigative action was taken concerning the information he provided to the Unit and therefore that the perjury was committed in an attempt to impede efforts to bring the manager to justice for other criminal activity.

In addition, the Petitioner did not sufficiently establish that the restaurant manager further abused him or exerted undue influence or control over him through manipulation of the legal system. The transcript of the TWC proceedings provided by the Petitioner reflects that any alleged perjured testimony by the manager was submitted to prevent the Petitioner from establishing the restaurant's culpability for not paying wages owed to the Petitioner for work the manager acknowledged the Petitioner performed on behalf of the restaurant. Moreover, the record does not reflect that the Petitioner had any relationship with the manager or the restaurant since June 2006, when the Petitioner indicated he was fired from employment.

As the Petitioner has not established he was directly and proximately harmed because of the perjury, and that the restaurant manager committed the perjury, in principal part, to frustrate efforts to bring the manager to justice or that the manager manipulated the legal system to further his control over the Petitioner, the Petitioner has not demonstrated that he was the victim of perjury or any other qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.

D. Substantial Physical or Mental Abuse

When assessing substantial physical or mental abuse, we look 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. *See* 8 C.F.R. § 214.14(b)(1).

At part 3.6 of the Form I-918 Supplement B, which asks for a description of any known or documented injury to the Petitioner, the certifying official stated "[u]npaid wages for hours worked." As previously discussed, the Petitioner generally indicated that he suffered from emotional distress,

delayed healthcare, and sleep disruption. The Petitioner relayed that he was unable to afford the expense of counseling, medical, and occupational services, and that he feared eviction from his residence along with the depletion of his savings account because he was not paid the wages owed to him. The Petitioner does not, however, include further details about the mental harm suffered or indicate that the criminal activity continues to impact his daily life and overall well-being. The letters from his previous housemates also did not provide any details regarding the Petitioner's alleged substantial abuse.

The Petitioner has not provided sufficient evidence to show the severe nature of the injury inflicted or of the harm suffered, or that there is permanent or serious harm to his appearance, health, or physical or mental soundness. Consequently, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act and the remaining statutory elements required for eligibility.

III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met this burden. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of S-C-*, ID# 16646 (AAO June 8, 2016)