

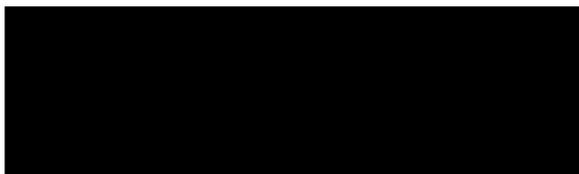
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

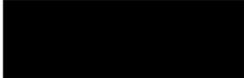
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**U.S. Citizenship  
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Services**

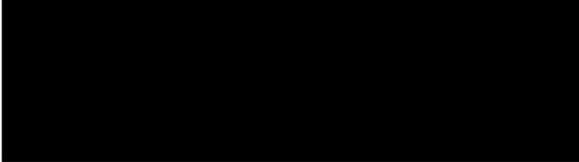


D14

FILE:  Office: VERMONT SERVICE CENTER Date: MAR 10 2011

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 was not the victim of a qualifying crime or criminal activity and she, therefore, could not meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submitted a brief, and indicated on the Form I-290B, Notice of Appeal or Motion, that he would provide additional evidence to the AAO within 30 days, or by January 6, 2011. As of this date, the record does not contain any supplemental evidence and we, therefore, consider the record complete.

*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;

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(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes{.}

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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who states that she last entered the United States in 1995. The petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the Immigration Court in Los Angeles, California in September 2002. The petitioner remains in removal proceedings before the Los Angeles Immigration Court and her next hearing date is scheduled for March 21, 2011.

The petitioner filed the Form I-918 U petition that is the subject of this appeal on March 26, 2010.<sup>1</sup> On

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<sup>1</sup> The petitioner filed a prior Form I-918 U petition on March 23, 2009 ( ), which was denied on November 2, 2010. The petitioner did not separately appeal the denial of that petition.

June 7, 2010, the director issued a Request for Evidence (RFE) to obtain additional evidence relevant to the statutory eligibility grounds at section 101(a)(15)(U)(i) of the Act. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed.

On appeal, counsel maintains that the petitioner was the victim of fraud, perjury, extortion and grand theft, and notes that the petitioner submitted a law enforcement certification (Form I-918 Supplement B) that listed the qualifying crimes. Counsel states that the petitioner has suffered substantial mental abuse and severe psychological stress as a result of her victimization. Counsel's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

### *The Claimed Criminal Activity*

The petitioner claimed in her August 14, 2005 affidavit that she was the victim of qualifying criminal activity because she went to a business called [REDACTED] so that she and her son could gain legal status in the United States. The petitioner stated that she paid approximately \$3,000 of a \$4,500 fee to [REDACTED] had her sign a blank form, which she later realized was an asylum application that it filed on her behalf. The petitioner asserted that [REDACTED] filing of the asylum application resulted in her being placed in immigration removal proceedings. The petitioner stated that she was unaware that an asylum application was being filed, and that after she complained and refused to pay more fees, [REDACTED] threatened her by stating that if she did not pay the fees and cooperate with "their strategy," [REDACTED] would suspend all work on her case and she would be immediately deported from the United States. The petitioner stated further that [REDACTED] told her that she would be deported if she informed "the authorities" that she did not want to file an asylum application.

When initially filing her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B that was signed by [REDACTED] Orange County, California. This form listed the criminal acts at Part 3.1 as perjury and grand theft. [REDACTED] provided the statutory citations for the criminal activity at Part 3.3 as California Penal Code (CPC) sections 487.1 (grand theft) and 127 (subornation of perjury). At Parts 3.5 and 3.6, [REDACTED] did not describe either the criminal activity being investigated or prosecuted, or any known or documented injury to the petitioner. Parts 3.5 and 3.6 referred to an "attached U-Visa Certification Form"; however, none was attached.

In response to the director's RFE, the petitioner submitted a "U Visa Certification Form," dated August 29, 2005, which was signed by [REDACTED] an Investigator with the Orange County District Attorney's Office.<sup>2</sup> [REDACTED] listed the statutory citations of the crimes being investigated or prosecuted as CPC sections 664/127 (procuring another to commit perjury); 524 (attempt to threat or

<sup>2</sup> This form was originally submitted in 2005 when the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On April 6, 2006, U.S. Citizenship and Immigration Services (USCIS) denied the petitioner's request for interim relief.

extort); and 487 (grand theft). According to [REDACTED], the petitioner paid [REDACTED] approximately \$3,000 to legalize her immigration status and it filed an asylum application on her behalf of which she was unaware. [REDACTED] asserted that [REDACTED] threatened the petitioner with immediate deportation if she did not pay the agreed upon fee, and noted that there were approximately 2,000 individuals like the petitioner who were similarly victimized by [REDACTED]

USCIS has sole discretion to determine the evidentiary value of a Form I-918 Supplement B. 8 C.F.R. § 214.14(c)(4). The Form I-918 Supplement B that was signed by [REDACTED] in February 2010 is not consistent with [REDACTED] August 2005 U Visa Certification Form, in that [REDACTED] indicates CPC § 524 (attempt to threaten or extort) as one of the crimes investigated or prosecuted, while [REDACTED] does not list such crime. As this inconsistency has not been explained, we shall only look at the crimes of perjury and grand theft, both of which were listed by [REDACTED] and [REDACTED] on their certification forms.

*Grand Theft Under C.P.C. § 487 is Not Substantially Similar to the Qualifying Crime of Extortion*

The crime of grand theft is not a statutorily enumerated 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 states: “[A]fter discussion [sic] the case with the DA’s office, we believe that the prosecution of . . . the individuals also merits prosecution for **extortion** as well . . . .” (Emphasis in original). Under California law, grand theft is committed “when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950) . . . .” (West 2011). Extortion is defined under C.P.C. § 518 as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” C.P.C. § 487(a) (West 2011).<sup>3</sup>

The relevant evidence in this case fails to demonstrate that grand theft is substantially similar to extortion. Extortion under C.P.C. § 518 requires that the victim’s property be obtained through the victim’s consent, which was “induced by a wrongful use of force or fear, or under color of official right.” Grand theft under CPC § 487(a) contains no similar element of consent induced by force, fear or under color of official right. Accordingly, the crime of grand theft is not similar to the qualifying crime of extortion because the nature and elements of the two crimes are not substantially similar, as required by the regulation at 8 C.F.R. § 214.14(a)(9).

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<sup>3</sup> Under CPC § 524, a threat or an attempt to extort is defined as: “Every person who attempts, by means of any threat, such as is specified in Section 519 of this code, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.”

Counsel does not address this legal insufficiency on appeal, but rather points to [REDACTED] U Visa Certification Form in which [REDACTED] listed CPC § 524, as a crime being investigated or prosecuted. As noted earlier, the record contains no clarifying information regarding the omission of the statutory citation of CPC § 524 on the Form I-918 Supplement B signed by [REDACTED] nearly five years after [REDACTED] signed the U Visa Certification Form. The qualifying criminal activity must be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). We, therefore, do not consider the crime of an attempt or threat to extort to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute La Guadalupana in the future for such crime.

*The Petitioner was not a Victim of Perjury*

Under CPC § 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 the perjury so procured.” (West 2011). 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.

C.P.C. § 118 (West 2011)

To establish that she was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that [REDACTED] procured her to commit perjury, at least in principal part, as a 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 La Guadalupana 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 only evidence of law enforcement action against [REDACTED] is a criminal complaint filed in March 2005, nearly three years after the petitioner signed her asylum application. As the complaint charges La Guadalupana with grand theft through immigration fraud against other individuals, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application 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 fraud as well as [REDACTED]'s subsequent misleading interactions with the petitioner, not from further perjury under C.P.C. § 118. Accordingly, we do not find that [REDACTED] suborned 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 or any other qualifying criminal activity, as required by section 101(a)(15)(U) 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 the other eligibility criteria listed at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act, including the requirement to demonstrate 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. 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).

In her affidavit, the petitioner does not describe or otherwise refer to any abuse she may have suffered

through her dealings with [REDACTED]. In a February 7, 2006 psychological evaluation prepared by [REDACTED], [REDACTED] stated that the petitioner was requesting a formal psychological evaluation to assess her emotional functioning due to a "fraudulent act against her by an immigration services office." According to [REDACTED], the petitioner reported having attention and concentration problems, memory difficulties, blurry vision, depression, stress, irritability, fatigue, and emotional sensitivity. [REDACTED] diagnosed the petitioner with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and opined that she would "benefit from professional assistance to help her with her emotional symptomatology." In an addendum, dated February 21, 2009, [REDACTED] stated that he had evaluated the petitioner for a second time and that her symptoms had worsened. [REDACTED] did not state whether the petitioner had sought counseling since he had first evaluated her three years earlier and he did not recommend any treatment in his addendum.

The petitioner also submitted letters from friends and family in support of her petition, documentation relating to her son's counseling through the public school system, and a "Consultation Form" relating to a visit that she made to a cardiologist for chest pain.

The petitioner's failure to provide a statement to USCIS detailing how her experience with [REDACTED] has impacted her physical and mental health prevents a determination that she suffered substantial physical or mental abuse. The petitioner's only statements about the impact of her experiences with [REDACTED] were made to [REDACTED], and she indicated generally that she has experienced extreme emotional distress due to the uncertainty of her future in the United States. The petitioner has not provided any probative details about how her health or daily life has been impacted in the eight years since she initially contacted [REDACTED] for assistance with her and her son's immigration matters. Although [REDACTED] diagnosed the petitioner with an adjustment disorder, he did not recommend any specific course of treatment. The letters from family and friends indicate generally that the petitioner is hardworking, caring and a good mother, but they fail to provide any insight into the petitioner's mental or physical health since her dealings with [REDACTED]. The petitioner's cardiology evaluation similarly fails to show that she suffered substantial physical or mental abuse in that it does not relate her complaint of having chest pains and heart palpitations to her experiences with [REDACTED]. We do not discount the anxiety and personal difficulties that the petitioner has experienced; however, the record does not establish that she has suffered substantial physical or mental abuse as a result of her victimization by [REDACTED] under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

### *Conclusion*

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. Her failure to establish that she was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.



Page 9

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed. The petition remains denied.