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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship
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Services



814

DATE: NOV 04 2011

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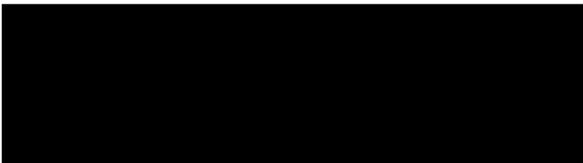
IN RE:

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)(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.

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;

(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) defines the following pertinent terms:

(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, 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).

Facts and Procedural History

The petitioner is a native and citizen of Mexico. In 2002, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to the Immigration Court. In 2006, an immigration judge denied the petitioner's application for cancellation of removal and granted him voluntary departure, with an alternate order of removal to Mexico should he fail to timely depart. On March 13, 2008, the Board of Immigration Appeals dismissed the petitioner's appeal.

The petitioner filed the instant Form I-918 U petition on September 19, 2008. The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The director found the petitioner's response to the RFE insufficient to establish his eligibility and denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

On appeal, counsel claims that the petitioner was the victim of the qualifying crimes of perjury and extortion. Counsel submitted a brief statement on the Form I-290B, Notice of Appeal, and indicated that no supplemental brief or additional evidence would be submitted. The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's brief assertions on appeal fail to overcome the ground for denial and the appeal will be dismissed for the following reasons.

The Claimed Criminal Activity

In his June 12, 2008 and February 24, 2010 declarations, the petitioner recounted that in 2002 he went to a business called [REDACTED] and spoke to a man that he thought was an attorney who promised to obtain lawful permanent residency for the petitioner at a cost of \$5,500 with additional fees. The petitioner stated that the man put information on an application and told him to sign it quickly without reading the document to him or giving him a copy. The petitioner explained that he never knew [REDACTED] had filed an asylum application for him until he went to Immigration Court. When he heard on the television news that the police had arrested [REDACTED] employees, the petitioner realized he had been defrauded. The petitioner stated that he paid at least \$3,500 to [REDACTED] and that the economic burden prevented him from buying things for his partner and their children. The petitioner explained that he had to pay additional legal fees to other individuals to help him with his immigration-related issues. The petitioner also recounted that the situation put stress on his relationship with his partner and he suffered from depression and insomnia worrying about possible deportation.

The law enforcement U nonimmigrant status certification (Form I-918 Supplement B) was completed by [REDACTED], Assistant District Attorney, Orange County, California District Attorney's Office. On the certification at Part 3.1, Criminal Acts, [REDACTED] indicated that the petitioner was the victim of extortion under California Penal Code (CPC) § 518, subornation of perjury under CPC § 127, solicitation to commit those crimes under CPC § 644 and grand theft under CPC § 487. At Parts 3.5 and 3.6 of the certification, which require descriptions of any known injuries to the victim and the criminal activity being investigated or prosecuted and the petitioner's involvement, [REDACTED] stated "please see attached U-visa certification form." However, no such form was attached.

Grand Theft Under CPC § 487 is Not a Qualifying Crime

The crime of grand theft is not a qualifying crime listed 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). 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)" Cal. Penal Code Ann. § 487 (West 2011). On appeal, counsel fails to establish that the nature and elements of grand theft under CPC § 487 are substantially similar to any of the qualifying crimes enumerated at section 101(a)(15)(U)(iii) of the Act.

The Petitioner was Not a Victim of Perjury

Under California criminal law, 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." Cal. Penal Code Ann. § 127 (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.

Cal. Penal Code Ann. § 118 (West 2011)

To establish that he was the victim of the qualifying crime of perjury in these proceedings, the petitioner must demonstrate that [REDACTED] procured him 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 [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 petitioner submitted newspaper articles reporting that [REDACTED] owner and five employees were charged with felony grand theft and conspiracy in March 2003. As [REDACTED] was charged with grand theft through immigration fraud over a year after the petitioner signed his asylum application in February 2002, there is no reason to believe that suborning the petitioner to commit perjury by signing a false asylum application avoided or frustrated any law enforcement agency's investigation or prosecution, as the crime would only provide further evidence of [REDACTED] 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. The record shows that [REDACTED] filed the 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, not from further perjury under C.P.C. § 118. Accordingly, the record does not show 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 record does not establish that the petitioner was the victim of the qualifying crime of perjury, as such victimization is defined at 8 C.F.R. § 214.14(a)(14)(ii).

The Petitioner was Not a Victim of Extortion

California penal law defines extortion 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.” Cal. Penal Code Ann. § 518 (West 2011). Although [REDACTED] indicated on the law enforcement certification that the petitioner was the victim of extortion under CPC § 518, he provided no description of the petitioner’s resultant injury or his involvement in the investigation or prosecution of that crime. In his declarations, the petitioner does not indicate that his payments to [REDACTED] were induced by a wrongful use of force or fear or under color of official right. Rather, the petitioner recounted that he voluntarily signed a contract with [REDACTED] and made monthly payments, for which he was given receipts. Although the record shows that the petitioner was the victim of [REDACTED] immigration fraud, the relevant evidence does not demonstrate that he was the victim of the qualifying crime of extortion.

Conclusion

The petitioner has not demonstrated that he was a victim of perjury, extortion or any other qualifying criminal activity, as defined at section 101(a)(15)(U)(iii) of the Act. His failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

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.

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