



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23250500

Date: DEC. 16, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the record did not establish that the Petitioner was a victim of a qualifying crime. The Director then dismissed the Petitioner’s subsequent combined motion to reopen and to reconsider this denial. The matter before us on appeal is the Director’s dismissal of the Petitioner’s combined motion to reopen and to reconsider.

We review the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director’s decision and remand the matter to the Director for the entrance of a new decision consistent with the following analysis which, if adverse to the Petitioner, shall be certified to us for review.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act.

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). 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” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Procedural History

In July 2015, the Petitioner filed a U petition on the basis of the crime of perjury perpetrated against him by D-C-,¹ his former attorney. In denying this U petition, the Director determined that although the qualifying crime of perjury had been detected, investigated, and prosecuted as perpetrated against the Petitioner, the record did not establish that he was a victim of this crime, as defined at 8 C.F.R. § 214.14(a)(14).² The Director then dismissed the Petitioner's combined motion to reopen and reconsider this decision, concluding that the Petitioner had not offered documentary evidence of new facts sufficient to establish that he had been a victim of perjury and had not shown that the Director's prior decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record of proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(2),(3).

On appeal, the Petitioner again asserts that he is a victim of perjury as he was both directly harmed by D-C-'s perjury and because D-C- committed perjury in order to further the attorney's exploitation over him through manipulation of the legal system.

B. The Petitioner is a Victim of the Qualifying Crime of Perjury

Upon de novo review of the record, the Petitioner has established that he was the victim of the qualifying crime of perjury. Under 8 C.F.R. § 214.14(a)(14)(ii), a petitioner may be considered a victim of perjury, including any attempt, solicitation, or conspiracy to commit this offense if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the ... perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the ... 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.

¹ Initials are used to protect the privacy of the individual.

² The Director further concluded that the Petitioner was a victim of the crime of felony theft of property in the second degree, a violation of section 13A-8-4(a) of the Code of Alabama, 1975, but that the record did not establish that this was a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.

1. Direct and Proximate Harm

On appeal, the Petitioner contends that he suffered harm when he engaged D-C- as an immigration attorney, and when D-C- acted as his representative before the immigration courts, even though unbeknownst to the Petitioner, D-C- had been disbarred from practice by the State of Alabama and suspended from practice before the Board of Immigration Appeals (Board), Immigration Courts, and the Department of Homeland Security (DHS). He submits a supplemental personal statement on appeal explaining that when he hired D-C- as an attorney, he was unaware of these legal problems and D-C- did not inform him of them. The record below supports the Petitioner's contentions on appeal by a preponderance of the evidence. On the Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B)³ below, the Chief Deputy District Attorney of the [redacted] [redacted] (Alabama) District Attorney's Office (certifying official), listed Ala. Code § 13A-10-103 (1975), (perjury in the third degree), as the statutory citation for the criminal activity being investigated or prosecuted. On the Supplement B, the certifying official described this criminal activity having occurred when, in [redacted] 2014, D-C- certified that he was an attorney in good standing on immigration applications filed on the Petitioner's behalf, although D-C- had been disbarred in [redacted] 2013 and suspended from practice before the Board, the Immigration Courts, and DHS in [redacted] 2014. The record reflects that D-C- was convicted on two counts of third-degree perjury and that the Court of Criminal Appeals of Alabama (Court) upheld this conviction in 2018.⁴ See *C- v. State* 272 So. 3d 206, 233 (Ala. Crim. App. 2018).

The record below also includes a copy of an executed July 2014 contract in which D-C- agreed to represent the Petitioner in immigration matters and to prepare immigration forms on his behalf, even though D-C- had been disbarred from practice by the State of Alabama and suspended from practice before the Board, Immigration Courts, and DHS at that time. The Petitioner also provided a copy below of the U.S. Department of Justice Executive Office for Immigration Review (EOIR) *Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court*, executed in September 2014 by D-C-, and on which D-C- declared "under penalty of perjury under the laws of the United States" that he was a member in good standing of the bar of the Puerto Rico Supreme Court and that this was true and correct. In upholding D-C-'s conviction on the charge of third-degree perjury, the Court explained that D-C- had been convicted because of this false attestation to EOIR. See *C- v. State* 272 So. 3d 206 at 232.

In addition, with the underlying U petition, the Petitioner included a copy of his Form I-589, Application for Asylum and for Withholding of Removal, on which he certified "under penalty of perjury under the laws of the United States that this application and the evidence submitted with it are all true and correct" and which provided the penalties under Federal law for such perjury.

³ The Supplement B provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

⁴ The Petitioner provided a copy of this decision in the record below. The decision shows that the Court upheld D-C-'s convictions on two counts of perjury in the first degree in violation of Ala. Code § 13A-10-101 (1975), one count of perjury in the third degree in violation of Ala. Code § 13A-10-103 (1975), three counts of second-degree theft of property in violation of Ala. Code § 13A-8-4 (1975), and three counts of unauthorized practice of law in violation of Ala. Code § 34-3-1 (1975).

However, this Form I-589 contained false statements. As the Court noted in upholding D-C-'s conviction for first-degree perjury, the Petitioner testified in D-C-'s trial that he had not made the statements entered on this Form I-589 to D-C-'s office and that D-C-'s office did not discuss this Form I-589 with him or tell him that he was signing an asylum application. *See C- v. State* 272 So. 3d 206 at 232. The record therefore shows, by a preponderance of the evidence, that when the Petitioner engaged D-C- to act as his immigration attorney and submit immigration forms on his behalf, he was not aware that D-C- was disbarred and suspended from practice, and that the Petitioner suffered harm when D-C- committed perjury on immigration forms, and submitted these forms with false statements on his behalf, posing the risk of future Federal penalties to the Petitioner.

2. Exploitation through Manipulation of the Legal System

On appeal, the Petitioner also contends that D-C- committed perjury in order to exploit him through manipulation of the legal system when he paid D-C- a nonrefundable retainer to provide legal services as an immigration attorney and continued to pay D-C- for the filing of additional immigration forms on his behalf, when, as discussed above, D-C- had been disbarred and was suspended from practice before the Board, Immigration Courts, and DHS. Upon de novo review, the record supports this contention. On the Supplement B, the certifying official also listed Ala. Code § 13A-8-4 (1975), second-degree theft of property, as a criminal statute investigated and/or prosecuted as perpetrated against the Petitioner. The certifying official described the Petitioner's "known or documented injury" as occurring in [] 2014, when the Petitioner hired and paid D-C- to assist him in his immigration case and to file immigration forms for him, and paid him in [] 2015, although D-C- never informed Petitioner that he had been disbarred and was suspended from practice as an attorney before the Board and DHS. The executed contract between D-C- and the Petitioner reflects this agreement, receipts in the record below confirm these payments, and a Form I-797, Notice of Receipt, in the record below shows that D-C- filed a Form I-765 with USCIS on the Petitioner's behalf in January 2015. The record further reflects that D-C- was subsequently convicted on two counts of second-degree theft of property; in upholding this conviction, the Court concluded that there was sufficient evidence to show that D-C- had intentionally deceived the Petitioner into paying him to help obtain legal status in the United States when instead D-C- used these payments to submit falsified asylum applications on the Petitioner's behalf. *See C- v. State* 272 So. 3d 206 at 230. The record therefore shows by a preponderance of the evidence that D-C- continued to commit perjury, and exploited the Petitioner by taking funds to further the commission of this perjury for the purpose of manipulating the legal system.

For the foregoing reasons, the Petitioner has established on appeal that he is a victim of the qualifying crime of perjury based upon evidence in the record below, overcoming the Director's ground for dismissing his motion to reconsider.⁵ We will withdraw the Director's decision and remand the matter for the entrance of a new decision consistent with this analysis and for consideration of whether the Petitioner has satisfied the remaining U-1 eligibility criteria under section 101(a)(15)(U)(i) of the Act.

⁵ We note that the Petitioner offered new evidence with his motion to reopen.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis which, if adverse to the Petitioner, shall be certified to us for review.