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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 0 8 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 did not establish that she was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, counsel submits a statement and copies of documents already included in the record.

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 --
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> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

> (b) *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;
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> (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .
>
> (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and
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> (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate

any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in July 1995 without inspection, admission or parole. On an unknown date, she departed the United States and attempted to reenter on October 7, 1998 without inspection, admission or parole. She was expeditiously removed from the United States on the same day, and reentered on an unknown date without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 3, 2012. On May 3, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and the petitioner was a victim of substantial or physical abuse as a result of the qualifying crime. Counsel responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner was a victim of domestic violence harassment which is a "subset of 'Domestic Violence' and should be considered a qualifying crime."

Claimed Criminal Activity

In her declaration, the petitioner recounted that she started dating her ex-boyfriend in 2003, but they never lived together. He sold and used drugs but he repeatedly told her that he would stop and wanted a stable family. He did not stop selling or using drugs, and in 2006, the petitioner told her ex-boyfriend that she did not want to be with him anymore. The petitioner's ex-boyfriend was also controlling and mentally abusive to her, and she had even witnessed him pointing his gun at other people over disagreements. About a week after telling him that she did not want to be with him anymore, the petitioner's ex-boyfriend started calling and threatening her that if she did not get back together with him, he would "burn down [their] house, he would rob [her], and that he would kill [her] whole family."

The day after the petitioner's ex-boyfriend started calling her, he showed up to her mother's house, and when she went outside to speak to him, he refused to leave. The petitioner's daughter called the police and when they arrived, they arrested the petitioner's ex-boyfriend for harassment. He was released several days later, and started calling the petitioner again, threatening to tell police that the petitioner was prostituting her daughters. During one incident when she decided to meet her ex-boyfriend at the park, he grabbed her keys and stole her car. She went to the police to report the incident, but they said there was nothing they could do.

Several months after his arrest, the petitioner's ex-boyfriend showed up at her mother's house again, and said he wanted to come in. The petitioner said "no" and called the police. However, when the police arrived, her ex-boyfriend had fled. The police waited for her ex-boyfriend to call, and when he did, the police officer told him that he would be arrested if he came back to the petitioner's home. The petitioner's ex-boyfriend made fun of the police officer, and the petitioner decided to obtain a restraining order against him. She was "very afraid of him, and he continued to make threatening calls;" however, she heard that he was arrested on the east coast and is now in jail.

The Form I-918 Supplement B that the petitioner submitted was signed by Chief [redacted] City of [redacted] Police Department (certifying official), on November 29, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence and harassment. In Part 3.3, the certifying official refers to Revised Code of Washington (R.C.W.) § 9A.46.020, domestic violence harassment, 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, he indicated that the petitioner "was continuously threatened and subjugated [sic] to mental and emotional abuse by her boyfriend." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "has suffered for many years from mental and emotional hardship as a result of her abusive relationship."

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, establishes that the petitioner was the victim of qualifying criminal activity for the following reasons.

Domestic Violence Harassment under Washington Law is a Qualifying Crime

The certifying official at Part 3.3 in the Form I-918 Supplement B indicated that he investigated or prosecuted the crime of "domestic violence, harassment." The crime of harassment is not specifically listed as a qualifying 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). Thus, the nature and elements of the harassment offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under the Revised Code of Washington, a person is guilty of harassment if: "(a) Without lawful authority, the person knowingly threatens: (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or (ii) To cause physical damage to the property of a person other than the actor; or (iii) To subject the person threatened or any other person to physical confinement or restraint; or (iv) Maliciously to do any other act which is intended to substantially

harm the person threatened or another with respect to his or her physical or mental health or safety; and (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out." Wash. Rev. Code Ann. § 9A.46.020 (West 2014). Domestic violence harassment is committed against a family or household member. A family or household member can be "[p]ersons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship . . . ." Wash. Rev. Code Ann. § 10.99.020(3) (West 2014).

Although R.C.W. § 9A.46.020 provides for a general definition of harassment, the certifying official investigated the criminal activity as a domestic violence offense based upon the petitioner's relationship to the perpetrator, with the offense being harassment. *See* R.C.W. § 10.99.020(5)(which provides that the term *domestic violence* includes crimes when committed by one family or household member against another). Here, the certifying official has certified and the record demonstrates that the petitioner was a victim of a domestic violence crime. Accordingly, she has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director's contrary determination.

Substantial Physical or Mental Abuse

At Part 3.6 of the Form I-918 Supplement B, the certifying official indicated that the petitioner has suffered many years of mental and emotional hardship from her ex-boyfriend. In the incident report, a police officer indicated that according to the petitioner's daughters, the petitioner did not want to be with her ex-boyfriend anymore but she was "afraid of him." The police officer stated that the petitioner was "apprehensive" about giving a statement and it was apparent that the petitioner was afraid of her ex-boyfriend but she did answer the police officer's questions. The petitioner stated that her ex-boyfriend had been to jail before but he always got out and she fears he would retaliate against her and her family. The petitioner states she is afraid of meeting new people, and fears her ex-boyfriend will look for her or her family when he is released from jail. In his letter dated March 5, 2012, Pastor [redacted] indicates that he provided counseling to the petitioner and she "lives with the constant fear of always looking over her shoulder" and believes that her ex-boyfriend will retaliate against her when he gets out of prison.

In her mental health evaluation dated May 25, 2013, Ms. [redacted] a licensed mental health counselor, diagnoses the petitioner with dysthymic disorder, posttraumatic stress disorder, and adjustment disorder with mixed anxiety and depression. She indicates that the petitioner's dysthymic disorder stems from being raised in a "violent, alcoholic and impoverished family"; witnessing domestic violence between her parents; and experiencing physical and emotional neglect as a child in Mexico. Ms. [redacted] states that according to the petitioner, she was "psychologically, physically and sexually abused and harassed" by her ex-boyfriend and he was very violent. The petitioner is still afraid of her ex-boyfriend, and has nightmares and anxiety when she thinks about him. Ms. [redacted] recommends that the petitioner receive mental health treatment.

A preponderance of the relevant evidence demonstrates that the petitioner suffered substantial mental abuse as the result of her victimization. The evidence in the record, including the Form I-918 Supplement B, the temporary restraining order and incident report, mental health documents, and

statements from the petitioner and her friends provide probative and credible details of the certified crime as well as other related domestic violence activities perpetrated against her by her ex-boyfriend, who was also the perpetrator of the certified criminal activity. The evidence documents a history of domestic violence perpetrated by the petitioner's ex-boyfriend against the petitioner and the certified criminal activity aggravated the petitioner's pre-existing dysthymic disorder. The totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

The Remaining Statutory Criteria

The evidence in the record also establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. The certifying official provided on the Form I-918 Supplement B that the petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (entry without inspection), (a)(6)(C)(i) (fraud or misrepresentation) and (a)(7)(B)(i) (nonimmigrant without a valid passport) of the Act without analysis and denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192,* dated November 12, 2013. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

Conclusion

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 been met as to the petitioner's statutory eligibility for U

nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The November 12, 2013 decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.