

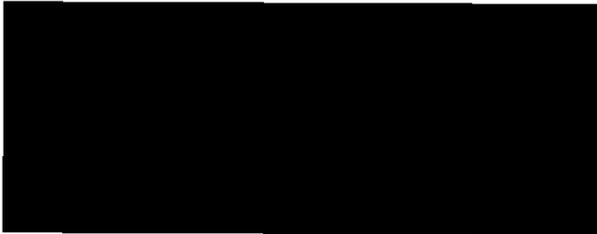
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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



D14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 10 2010**

IN RE: [REDACTED]

PETITION: Petition for U Nonimmigrant Classification as a Victim of Qualifying Criminal Activity Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

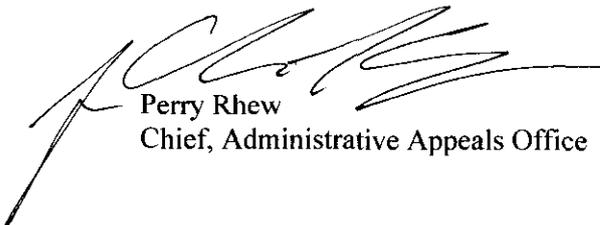
ON BEHALF OF PETITIONER:



**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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 on the basis of his determination that the petitioner had failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Counsel filed a timely appeal, and submitted a letter and additional evidence.

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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part, the following:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

\* \* \*

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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 USCIS [U.S. Citizenship and Immigration Services]. 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.”

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

- (8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.
- (9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: 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 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.

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 214.14(b), which states, in pertinent part, the following:

- (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[.]

*Facts and Procedural Posture*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of South Korea who states on the Form I-918 that she entered the United States in approximately November 2004 without inspection.

The petitioner filed the instant Form I-918 on April 14, 2008. The director issued a subsequent request for additional evidence that, *inter alia*, the petitioner had suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Previous counsel responded to the director's request with additional evidence, and the petitioner submitted a second response without the assistance of counsel. In his response, previous counsel submitted a letter from Dr. [REDACTED] a chiropractor, who stated that the petitioner was under his care for nutritional therapy. In her response, the petitioner submitted a letter from [REDACTED] Director of [REDACTED] who stated that the petitioner suffered from Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder, and was receiving psychotherapy, medication, and social rehabilitation. Finding the evidence of record insufficient to establish that the petitioner suffered substantial physical or mental abuse, the director denied the petition, as well as the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, on April 9, 2009. Ms. [REDACTED] letter was not part of the record at the time the director issued his decision. On appeal, newly-retained counsel submits a letter from Dr. [REDACTED] [REDACTED] who diagnosed the petitioner with PTSD; generalized anxiety disorder; major depressive disorder; physical abuse of adult; and sexual abuse of adult.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's April 9, 2009 decision and sustains the petitioner's appeal.

*The Offense of Which the Petitioner was a Victim*

The Form I-918, Supplement B, which was signed by a Special Agent of the Eurasian Organized Crime Squad of the Federal Bureau of Investigation (FBI), indicates that the petitioner was the victim of criminal activity involving, or similar to, the following: (1) blackmail; (2) false imprisonment; (3) involuntary servitude; (4) sexual exploitation; and (5) trafficking in violation of 18 U.S.C. §§ 873 (blackmail); 1584 (sale into involuntary servitude); 1590 (trafficking); 1622 (subornation of perjury); and 2422 (coercion and enticement to travel to engage in prostitution). The Special Agent stated that the petitioner had been the victim of a trafficking ring operation in South Korea and had been transported to the United States and coerced into prostitution. The Special Agent stated further that because the FBI investigation is ongoing, the FBI has instructed the petitioner to withhold specific details regarding her experience. Finally, the Special Agent stated that the petitioner had been extremely willing to provide proactive cooperation in connection with FBI requests for additional information concerning suspected targets, and that she is willing to testify if required.

*Substantial Physical or Mental Abuse as a Result of Qualifying Victimization*

In her March 11, 2008 letter, the petitioner stated that she responded to an online advertisement promising a work visa and employment in the United States, and met with a broker. After her visa application was denied by the United States Embassy in Seoul, the broker told her that he would be able to secure a visa for her in Canada. She flew to Toronto, was transported to a private home in a rural area, and her passport was taken. One week later, the petitioner was driven to New York, and placed on a plane bound for Los Angeles. Although she had been told that she would obtain employment as a waitress or some other type of restaurant worker, she was taken to a location in the Koreatown section of Los Angeles where approximately eight other women were living. The women told the petitioner that they had been working in massage parlors, and were expected to engage in sexual relations with their customers. The petitioner asked for her passport, but was told it was being held in order to secure payment of \$13,000 as compensation for her transportation to the United States. The petitioner stated that she had no choice but to work as demanded, since she had no money, no identification, and nowhere to live. A few days later, she was told there was no work for her in Los Angeles, and that she would go to Dallas. She was transported to Dallas, and taken to a massage parlor. She worked in Dallas as a prostitute for two years before meeting her then-attorney, who introduced her to FBI agents in Los Angeles.

As further evidence of substantial physical or mental abuse, the record contains the FBI Special Agent's remarks on the Form I-918, Supplement B; a January 12, 2009 letter from Dr. [REDACTED] a March 5, 2009 letter from [REDACTED] Director of Dallas [REDACTED] Services; and a June 2, 2009 letter from Dr. [REDACTED]

On the Form I-918, Supplement B, the FBI Special Agent stated that although the petitioner claimed "various gynecological injuries," those injuries had not been confirmed by the FBI, and there were no known physical injuries. However, the Special Agent stated that the petitioner had been "observed to be in an impaired emotional state as a consequence of her experience."

In his letter, Dr. [REDACTED] stated that the petitioner was under his care for nutritional therapy in order to elevate her mood and decrease her fatigue. He stated that he had seen little to no improvement in her condition since beginning treatment and that the petitioner was, in his opinion, clinically depressed. Dr. [REDACTED] recommended that the petitioner seek psychiatric care.

In her letter, Ms. [REDACTED] stated that the petitioner was undergoing psychotherapy and social rehabilitation, and taking medication. Ms. [REDACTED] stated that the petitioner reported that she had been led, involuntarily, into prostitution by a broker. Ms. [REDACTED] stated that the petitioner reported further that, after resisting, she was physically and emotionally abused. She told Ms. [REDACTED] that she was forced to remain in the same place all day, every day, regardless of whether she was eating, sleeping, or selling sex. On the rare occasions she was permitted to go outside she was monitored closely. Ms. [REDACTED] stated that the petitioner manifested the following symptoms of PTSD: irritability

and angry outbursts; feelings of persecution and withdrawal; lack of concentration and impaired decision-making; insomnia and nightmares due to self-hate; pessimism; a fatalistic attitude regarding her current and future life; and avoidance of friends, work relations, and other people associated with traumatic events. On the basis of these symptoms, Ms. ██████ diagnosed the petitioner with PTSD and Major Depressive Disorder.

In her letter, Dr. ██████ stated that the petitioner described, credibly, having been forced to work as a prostitute in a massage parlor. She stated that the petitioner's story was consistent, unchanging, and had clear detail. Dr. ██████ stated that the petitioner suffers the following symptoms of PTSD, generalized anxiety, and depression: sleeplessness; nightmares; flashbacks; fearfulness; worry; difficulty concentrating; hopelessness; self-loathing; suicidal ideation; and social isolation. Dr. ██████ stated that, in her opinion, these symptoms are the direct result of her traumatic experience as a victim of human trafficking. She stated that the physical, mental, and sexual abuse to which the petitioner was subjected has made the petitioner fearful of connecting to people and seeking out the help and support she needs to recover. Finally, Dr. ██████ stated that the petitioner also credibly described having been physically and mentally healthy prior to her experience. Dr. ██████ diagnosed the petitioner with the following conditions: (1) PTSD; (2) generalized anxiety disorder; (3) major depressive disorder; (4) physical abuse of adult; and (5) sexual abuse of adult.

The preponderance of the relevant evidence establishes that the petitioner was subjected to substantial physical and mental abuse as a result of having been a victim of qualifying criminal activity. Counsel concedes on appeal that the statement by Dr. ██████ which was before the director when he issued his decision, was alone insufficient to establish the petitioner's claim. However, the statements by Ms. ██████ and Dr. ██████ were not before the director at the time he issued his decision.

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 nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; 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. Moreover, 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. 8 C.F.R. § 214.14(b)(1). Regarding the nature and duration of the injury inflicted, the record indicates the petitioner was subjected to forced prostitution for a period of approximately two years.<sup>1</sup> Further, the FBI Special Agent stated that the petitioner had been "observed to be in an impaired emotional state as a consequence of her injuries." Both Ms. ██████ and Dr. ██████ indicate that the petitioner has suffered serious mental harm, and both individuals diagnosed the petitioner with PTSD and major

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<sup>1</sup> The AAO acknowledges that the petitioner's statement contained only broad outlines of her experience. However, in this particular case, the FBI Special Agent specifically stated on the Form I-918, Supplement B that the petitioner had been "admonished by the FBI to withhold specific details concerning the matter."

depression. Under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence establishes that the petitioner suffered the requisite substantial physical or mental abuse as a result of her victimization.

*Conclusion*

The petitioner has established that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity under the standard and factors set forth at 8 C.F.R. § 214.14(b)(1), and the AAO concurs with the director's determination that the petitioner meets all other statutory requirements.

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

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, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. *See Decision of the Director*, dated April 9, 2009. The AAO has no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). As the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, the AAO will return the matter to the director for reconsideration of the Form I-192.

**ORDER:** The appeal is sustained. Because the petitioner is statutorily eligible for U nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 petition, which, if adverse to the petitioner, shall be certified to the AAO for review.