

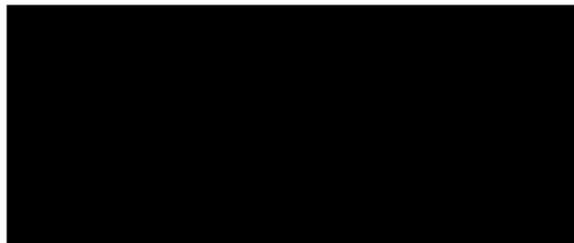
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 13 2010

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 submit a properly completed law enforcement certification, Form I-918 Supplement B, U Nonimmigrant Status Certification, (Form I-918 Supplement B). On appeal, counsel submits a Form I-918 Supplement B and asserts that the information previously submitted by the petitioner provided all the required information asked for in the Form I-918 Supplement B.

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[.]

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

(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(a) provides the following pertinent definitions:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

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:

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. 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who was the victim of a crime on October 3, 1992. The petitioner returned to Mexico sometime after the crime occurred. On January 29, 1993, the petitioner was paroled into the United States in the public interest. The petitioner filed the instant Form I-918 petition on August 4, 2008. On September 24, 2009, the director issued a Request for Evidence (RFE), asking the petitioner to submit: A completed Form I-918 Supplement B; a statement from a certifying official and supporting evidence indicating that he possessed information about the cited criminal activity; and evidence that he had been helpful or would likely be helpful in the investigation and prosecution of the qualifying crime. The petitioner responded to the RFE with a [REDACTED] Police Report. Counsel for the petitioner indicated that a "statement from certifying office is not available at this time." The director determined the information provided in response to the RFE was insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed.

On appeal, counsel submits a Form I-918 Supplement B signed by the Deputy District Attorney, [REDACTED] County District Attorney's Office on May 17, 2010. Counsel contends that the previously submitted documentation provided the same information as required on the Form I-918 Supplement B and that the police report had been signed by [REDACTED], a certified official working in a certified agency.

Based upon the evidence in the record before the director, he made the correct decision to deny the petition. The petitioner must submit a Form I-918 Supplement B when filing a petition for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(2)(i). While we recognize the difficulties that a

petitioner may face in obtaining a law enforcement certification, United States Citizenship and Immigration Services (USCIS) lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). Similarly, USCIS cannot accept other evidence in lieu of the Form I-918 Supplement B certification completed and signed by a certifying official as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i).

In this matter, however, the petitioner submits the Form I-918 Supplement B on appeal. The AAO will review the Form I-918 Supplement B in this instance to determine whether the petitioner meets the eligibility criteria specified at section 101(a)(15)(U) of the Act. On the Form I-918 Supplement B, the certifying official listed the statutory citations for the criminal activity as: section 209(B) - kidnapping for gain or to commit robbery or rape; section 211 - robbery; and section 207 - kidnapping of the Penal Code. The AAO notes that kidnapping is a qualifying crime. In addition, as the petitioner was the victim of the crime he possessed information regarding the qualifying crime. Further, the certifying official indicated that the petitioner had cooperated in the investigation and prosecution of the suspects by providing a description of them to the police, meeting with the prosecutor to prepare for court, and appearing in court in order to testify. The record shows that the crime was committed in on October 5, 1992; thus, the crime occurred in the United States. The remaining element to establish eligibility for "U" nonimmigrant status is whether the petitioner suffered substantial physical or mental abuse as a result of his victimization.

Substantial Physical or Mental Abuse as a Result of Qualifying Victimization

The petitioner explained in a July 23, 2008 declaration, that while he was pulled over at the side of the road because of car trouble, he was approached and forced at gunpoint by individuals to drive to several ATMs to withdraw money against his will, that his property inside the vehicle was stolen, and that he remained under the kidnappers' control for several hours. The petitioner also declared that while under the kidnappers' control, he was threatened with death. The petitioner further indicated that sometime after the kidnapping, as he was leaving his house, a car pulled up behind him and someone in the car started shooting at him. The petitioner explained that he was not hit by any of the bullets and that as he did not have police protection and suspected that the shooting occurred at the instigation of his kidnappers, he fled to Mexico in fear of his life. The petitioner noted that at some point he was contacted by detectives from the Police Department who asked that he return to the United States to assist them in the prosecution of the individuals who kidnapped him. The petitioner indicated that he agreed to assist them and returned to Regarding the petitioner's physical or mental abuse, the petitioner stated:

I have suffered sever[e], mental anguish as the victim of a kidnapping. I have also suffered sever[e] mental anguish from having my privacy invaded. I had a loaded gun pointed at me continuously for hours. My mental anguish has been aggravated by the attempt made on my life. I have suffered from panic and paranoia, which has interfered with my daily activities.

On the Form I-918 Supplement B, the certifying official noted that the petitioner did not sustain any physical injuries due to the crime and further noted that the petitioner was “emotionally traumatized from having a gun held to his body & head for several hours and he was continuously threatened during the incident as well.”

Upon review of the record, the AAO does not find further information demonstrating that the petitioner suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime. The AAO observes that the petitioner is not claiming that he suffered physical abuse, and the record does not include any evidence that the petitioner suffered injury or harm to his physical person. The AAO, therefore, has reviewed the record to determine whether the petitioner sustained substantial mental abuse. Factors to consider when making this determination include the nature of the injury inflicted or suffered (emotional trauma), the severity of the perpetrator’s conduct (threatening the petitioner’s life with a loaded weapon), the severity of the harm suffered, (mental anguish, panic and paranoia), the duration of the infliction of the harm (several hours), and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. No single factor is a prerequisite to establish that the abuse suffered was substantial and the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. 8 C.F.R. § 214.14(b)(1).

In this matter, the petitioner has not provided a detailed description of the mental anguish he has suffered, or provided a detailed probative statement regarding the panic and paranoia he experienced or experiences. We note that the crime of which the petitioner was a victim occurred 18 years ago, and the record lacks any evidence to show that the petitioner suffered permanent or serious harm to his appearance, health, physical, or mental soundness as a result of his victimization. Thus, the record is lacking in the necessary information and evidence to establish that the petitioner has suffered substantial mental abuse. The AAO is aware that an individual who is held at gunpoint for several hours may experience emotional trauma or anguish; however, the AAO is without detailed probative evidence regarding the emotional trauma or anguish suffered. Under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence fails to establish that the petitioner suffered the requisite, substantial physical or mental abuse.

Contrary to the reference in the director’s February 19, 2010 decision, the director did not request additional evidence regarding the element of “substantial physical or mental abuse” suffered by the petitioner. Thus, the petitioner has not had an opportunity to expound upon this element in the course of these proceedings. *The director’s decision in this matter will be withdrawn and the matter remanded for the issuance of an RFE so that the petitioner may submit evidence to establish that he suffered substantial physical or mental abuse as the result of being the victim of the qualifying crime of kidnapping.*

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, the petitioner has met his burden in establishing that he was the victim of a qualifying crime; however, the

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record lack sufficient evidence that he suffered substantial physical and mental abuse as a result of the kidnapping.

Throughout 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).

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reason discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.