

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



D14

FILE:

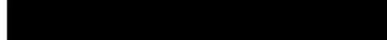


Office: VERMONT SERVICE CENTER

Date: **OCT 19 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:

SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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: (1) did not submit a properly completed law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B)); (2) has not been the victim of qualifying criminal activity; (3) has not suffered substantial physical and mental abuse as a result of having been the victim of qualifying criminal activity; (4) does not possess credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity upon which his petition is based; (5) has not been, is not being, or is not likely to be helpful to United States (U.S.) law enforcement authorities investigating or prosecuting qualifying criminal activity; and (6) is inadmissible due to his conviction for possession of cocaine with intent to distribute. On appeal, the petitioner submits a statement and indicates on the Form I-290B, Notice of Appeal or Motion, that a brief or other evidence will be submitted to the AAO within 30 days. We note that the petitioner submitted the Form I-290B on May 17, 2010 and as of this date, we have not received any additional evidence to supplement the record. The record is, therefore, considered complete and ready for adjudication.

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(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.”

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.

(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.

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;

(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

(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.

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 ██████ whose application to become a lawful permanent resident was approved in November 1987. On February 22, 1991, the petitioner was convicted of cocaine possession, with intent to distribute, and sentenced to 60 months of confinement. On June 21, 1995, an immigration judge ordered the petitioner deported to ██████ at which time he lost his status as a lawful permanent resident. On August 15, 1995, the Board of Immigration Appeals dismissed the petitioner's appeal, and he was removed from the United States on October 19, 1995.¹

In March 1996, the petitioner attempted to enter the United States by stowing away on a ship from the ██████ and he was subsequently returned to the ship for repatriation to the ██████.² On his Form I-918 U petition, the petitioner claims to have entered the United States in January 2000 without inspection. The petitioner filed the instant Form I-918 U petition on June 23, 2009. On January 6, 2010, the director issued a Notice of Intent to Deny (NOID), asking the petitioner to submit, among other items: A completed Form I-918 Supplement B; a personal statement describing the facts of the victimization; a completed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant; and dispositions for the petitioner's arrests. The petitioner responded to the NOID with additional evidence, which the director found 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 the denial of the Form I-918.

On appeal, the petitioner cites 8 C.F.R. § 245.24(c),³ which he states allows him to submit an affidavit describing his efforts to obtain the required law enforcement certification in lieu of the actual certification. The petitioner claims that he went to the police station to have the Form I-918 Supplement B signed, but officials refused to sign it. The petitioner states that, although he is citing a regulation that pertains to the adjustment of status of U nonimmigrants, those individuals seeking initial U nonimmigrant status should also be permitted to submit alternate evidence in lieu of the law enforcement certification because of the barriers they face obtaining evidence from law enforcement

¹ The petitioner's record as a lawful permanent resident and the subsequent loss of that status is recorded under the alien-number, ██████

² The petitioner's attempt to enter the United States as a stowaway is recorded under the alien-number, ██████

³ In his statement, the petitioner quotes the language at 8 C.F.R. § 245.24(e)(2), not the language from 8 C.F.R. § 245.24(c).

officials. Regarding the issue of jurisdiction over the crime of which the petitioner was a victim, the petitioner states the crimes of which he was a victim can also be prosecuted in the United States. The petitioner cites to 18 U.S.C. § 2340A to support his assertions. Finally, the petitioner states that he has suffered substantial physical and mental abuse as a result of the torture that he suffered in [REDACTED]. The petitioner's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

Law Enforcement Certification

The petitioner's citation to the language at 8 C.F.R. § 245.24(e)(2) is misplaced, as that section of the regulations relates to individuals who have already been granted U nonimmigrant status and are seeking to adjust to lawful permanent resident status. The law enforcement certification is a statutory requirement at section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1). The regulation further prescribes that a Form I-918 petition must be filed with the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(2)(i). The certification must state: (1) that the certifier is the head of the certifying agency or a supervisor designated to issue U nonimmigrant status certifications, or a federal, state or local judge; (2) that the certifying agency is a federal, state or local law enforcement entity, or prosecutor, judge or other authority that has responsibility for the detection, investigation, prosecution, conviction or sentencing of qualifying criminal activity; (3) that the petitioner is a victim of qualifying criminal activity that the agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law or occurred in the United States. *Id.*

Rather than submitting the certification required by statute and regulation, the petitioner submitted a police report, which indicates that the petitioner was the perpetrator of a crime, not the victim. This police report does not suffice. As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), he has not overcome this ground of the director's denial decision.

Victim of Qualifying Criminal Activity

The petitioner has not demonstrated that he was a victim of a qualifying crime or criminal activity. As stated previously, in lieu of the law enforcement certification, the petitioner submitted a police report as well as photographs taken of him at the crime scene. According to the police report, in February 2009, the police responded to a possible robbery in progress and when they arrived, they found the petitioner on the floor with his legs and hands bound, and with no pants on. The report indicates that the petitioner was soaked in bleach and had suffered severe injuries to his face and head. According to the report, the male of the household was outside when the petitioner brandished a black drill at him and demanded money. The petitioner took the male of the household into the home where the male of the household's son hit the petitioner with a piece of wood and they subdued him until the police arrived.

The petitioner submitted a June 15, 2009 statement in which he states a different version of the events that were described in the police report. According to the petitioner, he had been having a relationship with a woman named L-M-⁴ for two years. In February 2009, L-M- told the petitioner that she wanted to see him at her home, so he arrived at her house where the front door was wide open. The petitioner states that he went inside the house when he was immediately struck in the head several times, and beaten by L-M-'s husband and children. The petitioner states he assisted the police in prosecuting the crimes against him and that L-M-, her husband, and their three sons are currently in jail. The petitioner submits a copy of a subpoena as evidence.

Based upon the evidence in the record, we do not find that the petitioner was the victim of a qualifying crime or criminal activity. We note that while the petitioner states that L-M- and her family members are currently in jail for their treatment of him, he has not submitted any evidence to support his assertions. The subpoena that the petitioner submits as evidence of L-M- and her family members' prosecution relates to a matter in the Juvenile Court, Miami-Dade County, regarding the interests of five children, all of whom have L-M-'s last name. Although the petitioner is commanded to appear at the trial, nothing in the subpoena indicates that the trial relates to the February 2009 incident with the petitioner.

Furthermore, the information in the police report and the petitioner's June 15, 2009 statement are entirely inconsistent and the petitioner has not presented any clarifying evidence. The police report indicates that the petitioner was the perpetrator of a crime rather than a victim, while the petitioner's statement indicates the opposite. A person who is responsible for criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(iii). As the record as it is presently constituted does not establish that the petitioner was the victim of a qualifying crime or criminal activity during the February 2009 incident or on any other occasion, he cannot satisfy the requirements described at section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that he was the victim of a qualifying crime or criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his alleged victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (USCIS) looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

⁴ Name withheld to protect individual's identity.

The petitioner submits a letter from [REDACTED], dated March 11, 2009, who states that he treated the petitioner for a head injury, elevated liver enzymes and a high PSA. [REDACTED] states that he has advised the petitioner to avoid standing for a long period of time because "he cannot help himself." In his June 2009 statement, the petitioner states that he has constant headaches, dizziness, a broken tooth and wounds all over his body. The petitioner explains further that every day he wakes up with a swollen face and that he has suffered substantial physical and mental abuse.

The record does not contain sufficient evidence to satisfy the regulation at 8 C.F.R. § 214.14(a)(8). [REDACTED] does not diagnose the petitioner with any particular medical malady, and he does not recommend any further medical or psychological treatment other than advising the petitioner to not stand for long periods of time. The petitioner's statement only provides a general outline of injuries from which he is suffering, and he does not explain their affect on his daily life either in the short or long term. As the petitioner has not presented sufficient evidence to address the factors relevant to a determination of substantial abuse that are listed in the regulation at 8 C.F.R. § 214.14(b)(1), the petitioner has not met this criterion.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(II).

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As previously discussed, the petitioner did not submit the requisite U Nonimmigrant Status Certification and provided no evidence from a certifying official that a certifying agency was investigating or prosecuting the alleged crimes. On appeal, the petitioner does not specifically address this portion of the director's decision. As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting the qualifying criminal activity, as required by 101(a)(15)(U)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Inadmissibility

The record contains evidence of the petitioner's February 1991 conviction for possession of cocaine, with intent to distribute, which renders him inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. In his January 6, 2010 NOID, the director instructed the petitioner to submit evidence relating to a waiver of the petitioner's inadmissibility pursuant to sections 212(d)(3) and (14) of the Act. When responding to the NOID, the petitioner elected to not address this particular issue and has also not addressed his inadmissibility on appeal. Accordingly, the



Page 9

petitioner is found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act.

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity and he has not met any of the eligibility requirements at section 101(a)(15)(U)(i) of the Act. The petitioner is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based upon his conviction for possession of cocaine with intent to distribute. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.