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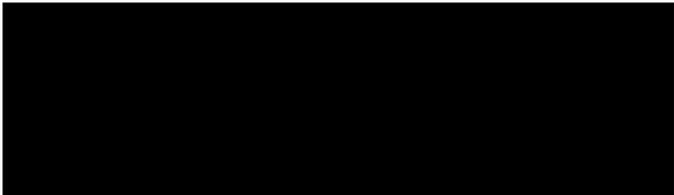
**PUBLIC COPY**

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



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

D14



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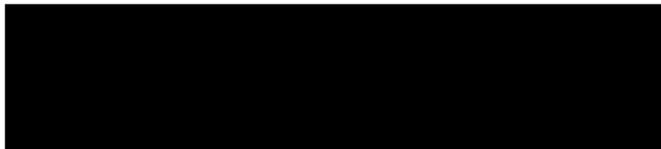


IN RE: Petitioner:



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, [REDACTED] Service Center, denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider and reopen. The motion to reconsider will be granted and the appeal will be sustained.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition finding that the petitioner did not establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The AAO concurred with the director's decision, and dismissed the appeal on May 20, 2010. In the motion to reconsider and reopen, the petitioner contends through counsel that the totality of the sexual, physical, and mental abuse she suffered as a result of her former boyfriend's domestic violence meets the substantial abuse standard. *See Brief in Support of Motion to Reconsider/Reopen*, dated June 18, 2010. On February 14, 2011, the AAO notified the petitioner through a Request for Evidence (RFE) that U.S. Citizenship and Immigration Services (USCIS) records indicate that an order of protection was issued *against* the petitioner on April 28, 2010, which was extended until June, 2011. The AAO provided the petitioner with an opportunity to submit copies of the relevant orders and documentation. The petitioner submitted a brief with responsive evidence, and the matter is now ready for review.

A motion to reopen a decision made by USCIS must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider a decision must state the reasons for reconsideration, and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider also must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* Here, the petitioner's submission does not meet the requirements for a motion to reopen, but does meet the requirements for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, the motion will be granted, and the AAO will reconsider its prior decision.

#### *Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Domestic violence is a qualifying criminal activity listed in clause (iii) of section 101(a)(15)(U) of the Act. However, “[a] person who is culpable for the qualifying 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).

The term “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, USCIS will assess 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.

8 C.F.R. § 214.14(b)(1). Additionally, “[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.” *Id.*

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The record reflects that the petitioner is a native and citizen of [REDACTED] who entered the United States in or around September, 2001, using a passport belonging to another individual. The petitioner claims that her former boyfriend became abusive shortly after they began living together in 2006. *See*

*Statement of* [REDACTED] dated Feb. 8, 2008. The petitioner states that he was extremely jealous and controlling, that he exhibited violent outbursts which included throwing objects and screaming obscenities at her, and that he physically forced her to have sexual relations. *Id.* The petitioner discovered that she was pregnant by her former boyfriend in August, 2007. *Id.*; *Letter from* [REDACTED], dated Jan. 11, 2008. In January, 2008, upon returning home from vacation, the petitioner discovered that her former boyfriend locked her out of their apartment and removed all of her possessions. *See Statement of* [REDACTED] The petitioner was forced to sleep on a train that night. *Id.* When she returned to the apartment, her former boyfriend called her and “told her when she comes back to the apartment he was going to kill her and if he can’t do it he will have someone else kill her.” *Domestic Incident Report*, dated Jan. 7, 2008; *Deposition of Detective* [REDACTED] *Letter from* [REDACTED], dated Jan. 31, 2008. The petitioner vacated the apartment and moved into a shelter. *See Statement of* [REDACTED]

On January 18, 2008, the petitioner obtained a temporary order of protection against her former boyfriend from the Criminal Court [REDACTED] *See Order of Protection*, [REDACTED] dated Jan. 18, 2008. On January 24, 2008, the petitioner obtained a second order of protection against her former boyfriend, which remained in effect for one year. *See Order of Protection*, [REDACTED] dated Jan. 24, 2008.

According to the Bureau Chief, Integrity Bureau of the [REDACTED] District Attorney’s Office, the petitioner was the victim of criminal activity involving domestic violence and aggravated harassment, and she was helpful to the investigation and prosecution of the crimes committed against her by her former boyfriend. *See Form I-918 Supplement B*, dated Jan. 31, 2008; *Letter from* [REDACTED] dated Jan. 31, 2008. The record reflects that the petitioner sought psychological support and counseling as a result of the abuse. *See Statement of* [REDACTED] *Letter from* [REDACTED] *Office of Domestic Violence and Emergency Intervention Services*, dated Sept. 8, 2008.

#### *Analysis*

In our prior decision, we determined that the petitioner had not suffered substantial abuse because she did not receive a “permanent order of protection,” the record lacked evidence that she had received “ongoing social and psychotherapy services,” and the relevant evidence did not establish that she “suffered permanent, serious harm or the aggravation of a pre-existing condition” as a result of her victimization.

On motion, counsel asserts that the AAO erroneously required that the harm suffered be both permanent and serious and failed to consider that the regulation at 8 C.F.R. § 214.14(b)(1) specifies that 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.” Counsel further asserts that the record shows that both the certifying official, the Bureau Chief of the [REDACTED] Attorney’s Office, and the state

criminal court judge determined that the petitioner's former boyfriend's actions were sufficiently aggravated as to warrant criminal prosecution and an extended order of protection.

Upon reconsideration, the AAO concludes that the petitioner has met her burden of demonstrating that she was the victim of substantial abuse. Specifically, our prior decision failed to acknowledge that although the individual acts to which the petitioner was subjected might not constitute substantial abuse on their own, the acts, in the aggregate, meet the substantial abuse standard. The death threats, which resulted in the issuance of two protective orders, the eviction and resultant homelessness and loss of economic support during her pregnancy, the controlling and violent behavior, the forced sex, and the petitioner's diagnosis of depression, taken together, rise to the level of substantial abuse. In addition, the record shows that the criminal court granted the petitioner a year-long order of protection after a hearing on her temporary order, and that she received treatment and counseling for her injuries. *See* 8 C.F.R. § 214.14(b)(1).

Because the petitioner was the victim of criminal activity involving domestic violence, an offense listed in the statute as a qualifying crime, *see* section 101(a)(15)(U)(iii) of the Act; *see also Form I-918 Supplement B*, and because local law enforcement has certified that the petitioner possessed information concerning the criminal activity, and that she has been helpful in the investigation and/or prosecution of the criminal activity that violated [REDACTED] penal law, the petitioner satisfies the remaining requirements in section 101(a)(15)(U)(i)(I)-(IV) of the Act, *see Form I-918 Supplement B; Letter from [REDACTED]*

USCIS records indicate that an order of protection was issued *against* the petitioner on April 28, 2010, and that the order of protection was extended until June 15, 2011. This order is relevant because a petitioner culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of such criminal activity. *See* 8 C.F.R. § 214.14(a)(14)(iii). In response to the RFE, the petitioner submitted a copy of the temporary order of protection issued against her on December 16, 2010, which remains in effect until June 15, 2011. *See Order of Protection, [REDACTED]; [REDACTED]* dated Dec. 16, 2010. The order of protection indicates that it was for a "[n]on-family offense . . . [n]ot involving victims of domestic violence." The order was issued against the petitioner to protect another individual, but the court simultaneously issued an order against that individual to protect the petitioner. *See Order of Protection, [REDACTED]* dated Dec. 16, 2010. A review of the order against the petitioner shows that it is not related to the order of protection granted her against her former boyfriend [REDACTED] or otherwise related to her former boyfriend. *Id.* The petitioner also submitted a copy of a Certificate of Disposition indicating that criminal charges against her arising from her arrest on April 28, 2010 were dismissed and sealed on July 28, 2010. A second Certificate of Disposition states that the criminal charges arising from the order of protection issued against her on December 16, 2010 are scheduled to be dismissed and sealed on June 15, 2011. Here, there is no evidence that the petitioner is culpable for the criminal activity involving domestic violence that was investigated and prosecuted. Accordingly, the petitioner is not excluded from being recognized as a victim of criminal activity under 8 C.F.R. § 214.14(a)(14)(iii).

*Conclusion*

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, the petitioner has met her burden of showing eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i)(I) of the Act. Accordingly, the appeal will be sustained.

The petitioner also must establish that she is admissible to the United States. 8 C.F.R. § 214.14(c)(2)(iv). In this case, the director denied the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), solely on the basis of the denial of the Form I-918. The AAO has no jurisdiction to review the denial of a Form I-192 submitted in connection with a U visa 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 matter will be returned to the director for reconsideration of the Form I-192.

**ORDER:** The motion to reconsider is granted and 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.