

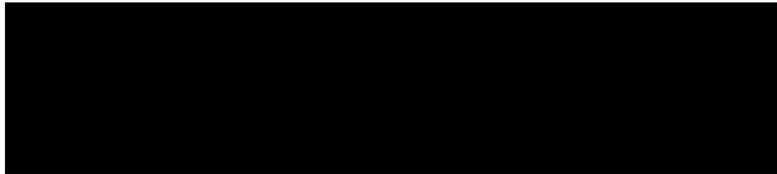
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



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



B14

DATE: DEC 01 2011

Office: VERMONT SERVICE CENTER

FILE: 

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)

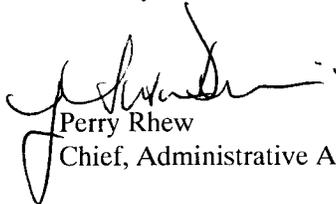
ON BEHALF OF PETITIONER:



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 (the 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 The director's decision shall be withdrawn and the matter returned to the director for further action in accordance with the following decision.

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 because a U Nonimmigrant Status Certification (Form I-918 Supplement B) was not initially submitted with the Form I-918 petition. The director also determined that there was no evidence to establish that the petitioner: had suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity; possessed information concerning qualifying criminal activity; and had been or was likely to be helpful to the investigation or prosecution of the perpetrator of the criminal activity.

On appeal, the petitioner states that she submitted the requisite certification in January 2011 before the director's denial decision was issued. On appeal, the petitioner submits a copy of the certification and additional evidence. The petitioner has established her eligibility for U nonimmigrant classification on appeal and the director's decision to the contrary shall be withdrawn for the following reasons.

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[.]

In addition, the regulations require U nonimmigrants to show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

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

(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[.]

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; 8 U.S.C. § 1184(p)(4).

Facts and Procedural History

The petitioner is a native and citizen of Mexico, who stated that she entered the United States in 2003 without inspection. On August 3, 2010, the petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, but she did not include the requisite certification, Form I-918 Supplement B. The director denied the petition for lack of this required initial evidence pursuant to the regulation at 8 C.F.R. § 214.14(c)(2)(i) and further determined that that the petitioner did not meet the requirements at subsections 101(a)(15)(U)(i)(I) – (III) of the Act.

The record shows that after filing her Form I-918 and prior to the issuance of the director's denial decision on March 4, 2011, the petitioner submitted a certification and additional evidence on January 25, 2011.

U Nonimmigrant Status Certification

The record contains a U Nonimmigrant Status Certification completed by [REDACTED] with the [REDACTED]. Regarding the criminal acts, [REDACTED] stated at Part 3 of the certification that the petitioner was the victim of domestic violence on October 1, 2009 in [REDACTED] California and that his agency had investigated or prosecuted willful infliction of corporal injury upon a spouse under California Penal Code (CPC) § 273.5; assault with deadly weapon or force likely to produce great bodily injury under CPC § 245; and criminal threats under CPC § 422. [REDACTED] described the criminal activity as assault upon and threats against the petitioner by her husband and described her injuries as a bloody nose, abrasions and contusions. At Part 4 of the certification regarding the petitioner's helpfulness, [REDACTED] confirmed that the petitioner had been helpful to the investigation and prosecution and stated: "Victim met w[ith] prosecutor while case was in warrant status and was very cooperative w[ith] law enforcement efforts and willing to follow through with prosecution, and all that may be required w[ith] such."

On appeal, the petitioner also submits a January 5, 2011 letter from [REDACTED] of the [REDACTED] confirms that [REDACTED] "is approved as the Certifying Official" for the petitioner's U Nonimmigrant Status Certification and that the approval was directed by the [REDACTED], the head of the certifying agency.

Although the certification was not initially submitted with the petition, it was filed prior to the director's decision and meets the pertinent requirements at section 214(p)(1) of the Act and the regulation at 8 C.F.R. §214.14(c)(2)(i). The director's determination that the record lacked the requisite certification is hereby withdrawn.

Substantial Physical or Mental Abuse as a Result of being a Victim of a Qualifying Crime

The petitioner has also overcome the director's determination that she did not suffer substantial abuse as a result of her victimization. The certification establishes that the petitioner was the victim of the qualifying crime of domestic violence. Other relevant evidence further demonstrates that the petitioner suffered substantial abuse as a result of her victimization. An October 1, 2009 police report states that the petitioner recounted that her husband punched her on the right side of her head with his fist five times, grabbed her by the neck and began choking her, covered her mouth when she began to scream for help, threatened to kill her, grabbed her by her hair, threw her to the ground and then kicked her right arm. The report describes the visible injuries to the petitioner as dried blood and an abrasion around her nose and contusions on the right side of her head and her right arm. The report also noted that the petitioner and her husband had been married for 16 years and there had been unreported domestic violence in the past.

The record contains a three-year restraining order against the petitioner's husband for the protection

of the petitioner and their three children, which was issued on October 23, 2009. The petitioner also submitted a July 26, 2010 letter from [REDACTED] a licensed counselor and psychotherapist, who confirmed that the petitioner had been diagnosed with Post Traumatic Stress Disorder and treated with weekly psychotherapy since May 3, 2010 to address the domestic violence of her husband. [REDACTED] stated that the petitioner's prognosis was guarded and that she needed further treatment.

In her personal statement, the petitioner recounted that she married her husband when she was 14 years old and that his physical and verbal abuse began shortly after their marriage. The petitioner credibly described her husband's repeated physical and sexual assaults and her detailed description of the incident leading to her calling the police is consistent with the narrative in the police report. The abuse and its effects on the petitioner are further described in the statements of her three daughters.

In sum, the preponderance of the relevant evidence demonstrates that the petitioner suffered substantial mental abuse as a result of having been the victim of the qualifying crime of domestic violence under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.14(b), and as required by subsection 101(a)(15)(U)(i)(I) of the Act. The director's determination to the contrary is hereby withdrawn.

Possession of Information Concerning the Qualifying Criminal Activity

The record also shows that the petitioner possess information concerning the domestic violence inflicted upon her. The certification, police report, and statements of the petitioner and her daughters all attest to her knowledge of the crime committed against her. Accordingly, the petitioner has established that she possess information concerning the qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act, and the director's decision to the contrary is hereby withdrawn.

Helpfulness to Law Enforcement

Finally, the petitioner has also established that she was helpful to local law enforcement agencies in the investigation and prosecution of the qualifying crime committed against her. As previously discussed, the certification attests to the petitioner's helpfulness to local law enforcement's investigation and the [REDACTED] prosecution of the domestic violence crimes of which she was a victim. On appeal, the petitioner also submits a printout of a December 2, 2010 electronic mail message from [REDACTED] with the [REDACTED] who confirmed that she met with the petitioner when there was a warrant out for her husband's arrest. [REDACTED] stated:

The victim was very cooperative with the process and prosecution of the defendant. She had told me that if she knew the whereabouts of the defendant, she would contact us or law enforcement so that the defendant may be arrested [T]he victim was true to her word .

and provided us with the whereabouts of the defendant, which led to his arrest and conviction in this case.

The record clearly demonstrates the petitioner's helpfulness to the investigation and prosecution of the qualifying crime of which she was the victim, as required by subsection 101(a)(15)(U)(i)(III) of the Act and the director's decision to the contrary is hereby withdrawn.

The Petitioner's Admissibility to the United States

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. We have 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). However, because the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192.

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, that burden has been met as to the petitioner's statutory eligibility for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act. The appeal will be sustained and the matter will be returned to the director for reconsideration of the petitioner's Form I-192.

ORDER: The appeal is sustained. Because the petitioner is statutorily eligible for U nonimmigrant classification, the matter is returned to the director for reconsideration of the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, and entry of a new decision on the Form I-918, Petition for U Nonimmigrant Status, which shall be certified to the Administrative Appeals Office for review if adverse to the petitioner.