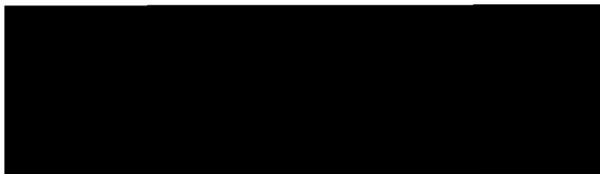


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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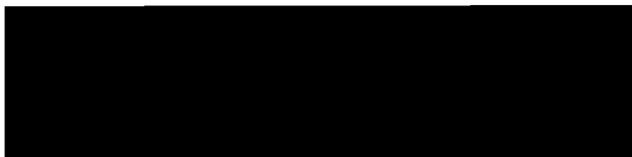
Date: DEC 27 2011

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:

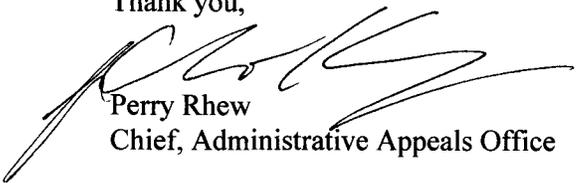


INSTRUCTIONS:

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.

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, with a fee of \$630. 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 U nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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.

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[.]

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[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native of India and citizen of Pakistan who entered the United States as a nonimmigrant visitor in 1991. In July 2006, the petitioner was the victim of domestic battery in the State of Illinois, perpetrated by his son-in-law. In December 2006, the petitioner filed a request for interim relief pending the publication of regulations implementing the U nonimmigrant classification, which USCIS granted on May 16, 2007. The petitioner filed the instant Form I-918 U petition on March 10, 2008. The director found the petitioner ineligible for U nonimmigrant status because he failed to establish that he suffered substantial physical or mental abuse as a result of the domestic battery he suffered in July 2006. On appeal, the petitioner's representative submits a brief and additional evidence.

Analysis

The record contains four affidavits from the petitioner, three submitted below and one on appeal. In each affidavit the petitioner recounts the 2006 domestic battery incident and its lingering effects on him. In his first affidavit, dated December 20, 2006, the petitioner stated that he was pushed and his left hand twisted by his son-in-law, which caused him to fall to the ground. The petitioner stated that he went to the emergency room for his injury, which “still causes me pain today.” The petitioner elaborated that approximately 10 days later, he went back to the emergency room in excruciating pain, but his doctors could not pinpoint the pain’s source. The petitioner stated his belief that the pain was a manifestation of emotional pain, and that he hoped he would recover, but that it seemed unrealistic.

In his second affidavit, dated March 25, 2010, the petitioner stated that his son-in-law pushed him on the ground two times and he had to go the hospital where “they diagnosed me with lower back pain and trauma to the neck.” The petitioner indicated that he has a very low appetite, prefers to be alone, often feels depressed and angry, and that he loses control of his temper with his family. The petitioner stated further that he feels as though he cannot heal, and that he considers what happened to be a private matter that he cannot share with anyone, including a doctor or counselor.

In his third affidavit, dated July 19, 2010, the petitioner stated that he had been suffering from mental torture during the last eight years because of his son-in-law’s actions. The petitioner avers that he has difficulty falling asleep, has lost his desire to spend time with his family, and prefers to stay by himself because he becomes upset when speaking with family members. According to the petitioner, he had surgery for leg pain before the domestic violence incident which alleviated some of his pain; however, his pain returned after the incident and it has become more unbearable, which makes it difficult for him to stand for long periods of time or take part in activities that were an everyday part of his life. The petitioner stated that he also now suffers from regular and intense back pain.

In fourth affidavit, dated April 20, 2011 and submitted on appeal, the petitioner describes his altercation with his son-in-law in July 2006. He states that his son-in-law pushed him once, which nearly made him fall down, and then shoved him a second time at which point the son-in-law was twisting the petitioner’s arm as he fell down. According to the petitioner, he fell backwards on the floor, almost completely on his left shoulder. The petitioner avers that he briefly lost consciousness and was in severe pain from the impact. The petitioner went to the hospital where the doctor told him that he had a shoulder contusion, and was prescribed strong pain medication. The petitioner states that he still has trouble focusing today and believes it to be the result of the emotional stress and trauma that he suffered from the altercation with his son-in-law. He also states that he stopped driving shortly after the altercation because he experiences anxiety that leaves him unable to focus.

The petitioner also avers that he wakes up in the middle of the night with his heart pounding, and it takes him some time to calm down. According to the petitioner, his wife has told him that he sleepwalks and screams in the middle of the night as if he is having nightmares. The petitioner states that he has been suicidal from depression; continues to experience pain in his shoulder, back, neck, and

leg; and sometimes uses a wheelchair because he cannot walk for more than a short distance. The petitioner also avers that he has changed the way that he, as a Muslim, prays because the traditional way of praying causes him pain, which makes it difficult to concentrate. The petitioner states that he feels shame and guilt over the events that transpired with his son-in-law, including events that occurred during the petitioner's daughter's divorce proceedings. He also states that he is scared of running into his son-in-law, who lives only a few blocks away.

The record also contains an affidavit, dated July 19, 2010, from the petitioner's daughter, who states that her father is unable to overcome the emotional trauma that occurred. She states that he is withdrawn, becomes irritable and anxious, and has difficulty controlling his emotions.

On appeal, the petitioner submits a letter, dated April 15, 2011, from [REDACTED] and a hand-written psychiatric initial evaluation. According to the letter, an initial psychiatric intake was completed on the petitioner on April 7, 2011 when the petitioner reported stress, anxiety, depressed mood, and loss of appetite stemming from his altercation with his son-in-law. [REDACTED] stated that the petitioner was diagnosed by a psychiatrist with Major Depression, single episode; Anxiety, Not Otherwise Specified; and Post Traumatic Stress Disorder. Both individuals state that the petitioner was prescribed Lexapro and recommended that the petitioner avail himself of psychiatric services and attend individual counseling sessions.

The petitioner also submits on appeal articles relating to elder abuse and domestic violence and cultural issues surrounding counseling in the Southeast Asian community, as well as a citation from Illinois law regarding aggravated battery to an elderly person. In her brief, the petitioner's accredited representative states that when concluding that the petitioner did not suffer substantial physical or mental abuse, the director failed to consider the age of the petitioner at the time of the incident; the additional harm to the petitioner's pre-existing leg injury due to the physical altercation with the son-in-law; and that the petitioner's religious and cultural beliefs intensified the physical and mental abuse that the petitioner has suffered.

Our review of the record fails to demonstrate that the petitioner suffered substantial physical or mental abuse. According to the petitioner's four affidavits, his daughter and son-in-law were having marital problems that sometimes turned violent prior to the July 2006 incident where the petitioner was injured. He recounts their marital difficulties and his intervention in their marriage prior to July 2006 as well as the emotional impact that their problems had on him, including his son-in-law's testimony during his daughter's divorce proceedings. Although the July 2006 incident may have exacerbated the stress that the petitioner felt from mediating his daughter's troubled marriage, it was not the initial cause of the claimed mental abuse. As noted in his July 19, 2010 affidavit where he states: "I have been suffering so much mental torture for the last 8 years of my life," the petitioner dates his mental suffering back to 2002, which is four years prior to the battery incident with his son-in-law. This admission is inconsistent with [REDACTED] statement in their April 15, 2011 letter that the petitioner reported that his stress, anxiety, depressed mood, and loss of appetite "started after his son-in-law physically abused him, causing a back injury."

The petitioner's accredited representative notes that the petitioner's mental abuse has been intensified by his age as well as the cultural sensitivities that make divorce and domestic violence shameful within the Muslim community. While we do not minimize the emotional effects of divorce and domestic violence on a family's well-being, the record overall does not demonstrate that the July 2006 incident aggravated any of the petitioner's existing conditions or caused any new mental health conditions resulting in substantial mental abuse.

The petitioner also claims that he suffered substantial physical abuse as a result of the July 2006 altercation with his son-in-law; however, the record fails to make such demonstration. On appeal, the petitioner for the first time states that he lost consciousness after being pushed to the ground and that he suffered a shoulder contusion. The petitioner never made these claims prior to the appeal, as he states that his injuries involved only his back, neck and leg, and his affidavit submitted on appeal does not explain the absence of these two reported traumas from his prior affidavits. While the petitioner's medical records confirm that he was treated at the emergency room for a shoulder contusion, the records do not mention that the petitioner informed medical personnel that he had lost consciousness and was subsequently confused for approximately 30 minutes, as the petitioner avers on appeal in his April 20, 2011 affidavit. To the contrary, the emergency room physician's notes indicate that the petitioner informed the attending physician of the pain in his left shoulder and attributed it to his fall and being kicked by his son-in-law; however, according to the physician, the petitioner reported no other injuries. The police report of the incident that the petitioner submitted below indicates that the petitioner informed the reporting officer that he would drive himself to the hospital to get "checked out." This report does not specify the injuries to the petitioner.

The petitioner further states on appeal that the altercation with his son-in-law aggravated surgery that he had in 2001 for varicose veins in his leg. He states that he must use a wheelchair sometimes because he cannot walk for more than a short distance and that the pain interferes with his ability to pray. The petitioner's medical records, however, do not reveal that the petitioner reported or sought treatment for pain in his leg. As stated previously, the emergency room physician's notes from July 19, 2006 indicate that the petitioner reported no other injury than left shoulder pain. The petitioner also submitted his medical records from a July 30, 2006 doctor's visit, which indicates that he was complaining of left groin/perineal pain, not pain in his leg. In addition, under the "History of Present Illness and Complaints Continued" section of the psychiatric initial evaluation, dated April 15, 2011, the petitioner reported that he has had back problems since the 2006 incident, and did not mention leg pain. Again, the record overall fails to demonstrate that the petitioner's altercation with his son-in-law aggravated any existing or created any new physical injuries resulting in substantial physical abuse.

Conclusion

The petitioner has established that he was the victim of a qualifying crime, that he possessed information concerning the qualifying criminal activity, and that he was helpful to State or local law enforcement investigating or prosecuting the criminal activity. However, 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 substantial physical or mental abuse as a result of his victimization, as required by section 101(a)(15)(U)(i)(I) of the Act .

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). The petitioner has not met his burden and remains ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.