

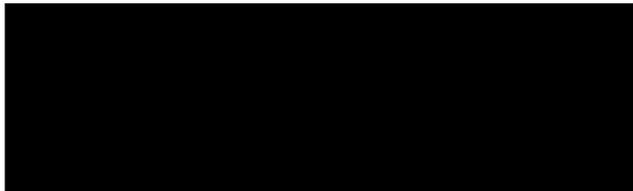
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



A14

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 05 2011

IN RE: Petitioner: [REDACTED]

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 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 U 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)(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 determined that the petitioner did not establish that he suffered substantial physical or mental abuse as a result of a qualifying criminal activity. The petition was denied accordingly. On appeal, the petitioner contends through counsel that he suffered substantial mental abuse as a victim of the qualifying criminal offense of felonious assault.

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). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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 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). Further,

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[.]

8 C.F.R. § 214.14(b)(1).

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 33-year-old native and citizen of Jordan who was admitted to the United States as a visitor on May 18, 2001. On April 24, 2005, the petitioner was punched in the face by a customer at the gas station where he worked. *See Victim Report by Wael AlSadi*, dated May 12, 2010. The petitioner states that he hit the customer back in self-defense, and the police arrived during the confrontation. *Id.* Later, the customer returned to the gas station and threatened the petitioner with a baseball bat. *See Form I-918 Supplement B*, dated July 22, 2009; *Police Report*, dated Apr. 29, 2005. The customer was arrested, prosecuted for aggravated assault, and sentenced to two years in jail. *Form I-918 Supplement B*. The petitioner claims that he took three months off from his job before he felt able to return to work. *See Psychological Evaluation*, dated Apr. 9, 2010.

The petitioner states that he was assaulted by another customer in 2009. *Id.* When the customer tried to hit him, the petitioner defended himself by pushing the customer down and hitting his arm. *Id.* The petitioner was arrested, charged with aggravated assault, and the case was eventually dismissed. *Id.*;

see also General Sessions Case Summary and Dismissal, dated July 2, 2009. The customer was not arrested or prosecuted. *Psychological Evaluation*, dated Apr. 9, 2010. After this incident, the petitioner quit his job at the gas station. *Psychological Evaluation*, dated Apr. 9, 2010; *Psychological Evaluation*, dated July 12, 2010.

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on September 1, 2009. On February 17, 2010, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of his petition. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner filed a timely appeal.

Analysis

Here, the petitioner was the victim of felonious assault, an offense listed in the statute as a qualifying crime. *See* section 101(a)(15)(U)(iii) of the Act. Additionally, the petitioner possessed information about the crime, and assisted local law enforcement in the prosecution of the defendant under section 39-13-102 of the Tennessee Code. *See* section 101(a)(15)(U)(i)(II)-(IV) of the Act.

However, the petitioner has failed to meet his burden of showing that he has suffered substantial physical or mental abuse as a result of having been a victim of the qualifying crime. First, the petitioner does not claim that he has suffered substantial physical injury or harm as a result of the criminal activity. *See* 8 C.F.R. § 214.14(a)(8).

Second, the record does not show that the mental harm to or impairment of the petitioner's emotional or psychological soundness was substantial pursuant to the criteria set forth in the regulations. *See* 8 C.F.R. § 214.14(a)(8), (b)(1). Specifically, the petitioner was involved in two violent confrontations with customers at his place of work. In the 2005 incident, the customer was convicted of aggravated assault. In the 2009 incident, the petitioner was charged with aggravated assault, but the charges were dismissed. The petitioner claims that he stopped working for three months after the first incident, and then quit his job after the second incident because he was afraid for his safety. *See Psychological Report*, dated July 12, 2010. The petitioner claims that the incidents have left him fearful, stressed, and prone to nightmares, and he has suffered from stomach pain since 2006. *Id.* A friend claims that the petitioner became more argumentative and defensive after the assaults. *Id.* Additionally, a clinical psychologist who evaluated the petitioner for purposes of the U visa petition opined that the petitioner met the diagnostic criteria for posttraumatic stress disorder and major depressive disorder. *Id.*; *see also Psychological Report*, dated Apr. 9, 2010. Despite these symptoms, the petitioner continues to work, dreams of going back to school, and is determined to be successful. *See Psychological Report*, dated July 12, 2010; *Psychological Report*, dated Apr. 9, 2010.

Here, the record supports the petitioner's claim that the incidents have had an impact on his mental health. However, the evidence presented does not show that the psychological impact of the criminal

activity rises to the level of substantial mental abuse, particularly where there is no evidence that the petitioner has suffered any permanent or serious harm to his appearance, health, or physical or mental soundness. *See* 8 C.F.R. § 214.14(b)(1).

Conclusion

Although the petitioner is the victim of a qualifying crime, he has not shown that he has 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. The petitioner is consequently ineligible for U nonimmigrant classification.

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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.