

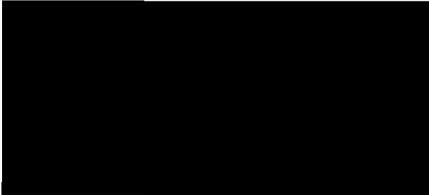
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **SEP 26 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 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 determining that the petitioner was excluded from consideration as a victim of qualifying criminal activity because he had been found culpable of the criminal activity. The director also found that the petitioner had not suffered substantial physical or mental abuse as a result of being the victim of domestic violence. On appeal, counsel submits a brief, the petitioner’s statement, and articles on domestic violence.

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 regulation at 8 C.F.R. § 214.14(a)(14) states in pertinent part:

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.

(iii) 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.

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 (Form I-918 Supplement B). 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; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1999. The petitioner filed the instant Form I-918 on April 21, 2008. On July 30, 2009, the director issued a request for evidence (RFE) to which the petitioner responded with statements from family and friends. The director found the petitioner's RFE response insufficient to establish the petitioner's eligibility and denied the petition accordingly. The petitioner, through counsel, timely appealed the denial of the Form I-918 petition.

On appeal, counsel for the petitioner asserts that the fact that both the petitioner and his abuser were arrested in the criminal incident should not be dispositive as to his culpability in the criminal activity in light of his declaration and the police report. Counsel submits letters from [REDACTED]

[REDACTED] and two articles regarding the issues of dual arrests in domestic violence cases and of determining the primary aggressor in same-sex domestic violence cases. Counsel also asserts that the petitioner suffered substantial physical and mental abuse as the victim of domestic violence and submits a mental health evaluation and hospital records in support of the Form I-918 U petition.

Analysis

The law enforcement certification (Form I-918 Supplement B) in this case states that the petitioner was the victim of domestic violence. However, the certifying official further explains that his agency investigated and prosecuted both the petitioner and his former partner for assault and battery arising from the same incident on May 20, 2007 and the official states that "both were convicted." Records from the Aurora, Colorado Municipal Court also confirm that on May 21, 2007, the petitioner pled guilty to and was convicted of domestic violence battery. Because

the petitioner is culpable of the qualifying criminal activity which the certifying agency investigated and prosecuted, he cannot be considered a victim of that qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(iii). We do not question the expertise of [REDACTED] or [REDACTED] nor do we discount the articles regarding dual arrests and determining the primary aggressor in domestic violence cases, particularly those involving same sex couples. However, these documents do not affect the petitioner's eligibility in this matter. Inasmuch as the petitioner avers his lack of culpability, we cannot look behind his conviction to reassess his guilt or innocence. See *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); *Matter of Sirhan*, 13 I&N Dec. 592, 594 (BIA 1970). Accordingly, we see no error in the director's assessment of the relevant evidence.

Conclusion

As the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act based on his conviction of domestic violence battery in Colorado, we shall not address whether he suffered substantial physical or mental abuse as the result of having been the victim of domestic violence. His petition, therefore, remains denied.

As in all visa petition proceedings, the petitioner bears the burden of proving 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. The petition remains denied.