



U.S. Citizenship
and Immigration
Services

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DATE: **SEP 27 2011** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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)

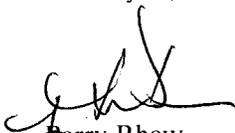
ON BEHALF OF PETITIONER:

[REDACTED]

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, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion is granted. The appeal will be sustained.

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 because the petitioner did not submit a properly completed law enforcement certification (Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B)). The AAO concurred in the director’s decision and dismissed a subsequently filed appeal. On motion to reopen, new counsel for the petitioner submits a certified Form I-918 Supplement B.

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.

The eligibility requirements are further set out 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 regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Bolivia who states that he entered the United States in 1990 on a B-2 tourist visa. The petitioner filed the instant Form I-918 on February 13, 2008. On June 26, 2009, the director issued a request for evidence (RFE), asking the petitioner to submit a completed Form I-918 Supplement B, among other documentation. Although the petitioner responded by providing additional evidence, the petitioner did not provide the law enforcement certification required by the statute at section 214(p)(1) of the Act. Accordingly, the director denied the petition. Upon review of the record, including counsel's statement regarding his attempts to obtain a Form I-918 Supplement B, the AAO dismissed the appeal. The AAO found that U.S. Citizenship and Immigration Services (USCIS) lacks authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act and could not accept other evidence in lieu of a Form I-918 Supplement B completed and signed by a certifying official as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). On motion, the petitioner's new counsel submits a signed and completed

Form I-918 Supplement B.

Victim of a Qualifying Crime or Criminal Activity

The Form I-918 Supplement B submitted on motion is signed by James M. Liander, Bureau Chief, Integrity Bureau of Queens County, New York, District Attorney's office and is dated August 18, 2010. At Part 3.1 Mr. Liander checked "other" and identified the crime of which the petitioner was a victim as sodomy in the 3rd degree. At Part 3.3 Mr. Liander listed the statutory citation for the crime as Sodomy in the 3rd degree (New York Penal Law 130.40-2), two counts. According to Mr. Liander the petitioner was helpful to the investigation and prosecution of the crimes committed by the perpetrator in that the petitioner reported the crime to the New York City Police Department, signed a corroborating witness statement, discussed the criminal case with the Queens County District Attorney's office, and agreed to testify at trial. Attached to the Supplement B is a copy of the criminal indictment charging the perpetrator with the following offenses in violation of New York penal law: first, second and third degree sodomy, sexual conduct against a child in the first degree, sexual abuse in the first degree, and endangering the welfare of a child. As observed in the AAO's prior decision, the record also includes a number of documents establishing that the petitioner was the victim of sodomy and child abuse and that he testified against the perpetrator, and was granted an order of protection.

Section 130.40 of the New York Penal Law provides in pertinent part:

A person is guilty of criminal sexual act in the third degree when:

2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old;

Criminal sexual act in the third degree is a class E felony.

The petitioner testified in court and the record shows that he was victimized by a family relative first when he was eleven years old and that the abuse continued until he was 14 years old. The petitioner has established that the crime of which he was a victim is similar to sexual assault and abusive sexual contact, qualifying crimes pursuant to section 101(a)(15)(U)(iii) of the Act.

Substantial Physical or Mental Abuse as a Result of Qualifying Victimization

In the petitioner's August 5, 2009 personal declaration, the petitioner recounted the abuse to which he had been subjected, noted that he continued to visit a social worker for counseling, and that he had to testify in court a few times against the perpetrator. Under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the relevant evidence establishes that the petitioner suffered the requisite, substantial physical or mental abuse as a result of having been a victim of qualifying crimes as required by section 101(a)(15)(U)(i)(I) of the Act. The petitioner is

consequently eligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

Conclusion

The petitioner has established that he is a victim of qualifying criminal activity and that he suffered substantial physical or mental abuse as a result of being such a victim. Accordingly the petitioner has established his eligibility for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

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 been met. Accordingly, the appeal will be sustained.

The regulations also require that a victim of qualifying criminal activity establish that he or she is admissible to the United States. 8 C.F.R. § 214.14(f)(1)(ii). In this matter, the director denied the petitioner's Form I-192, application for advance permission to enter as a nonimmigrant, solely on the basis of the denial of the Form I-918 Supplement A. *See Decision of the Director*, dated December 7, 2009. 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). As 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.

ORDER: The appeal is sustained. Because the beneficiary is statutorily eligible for U nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918.