

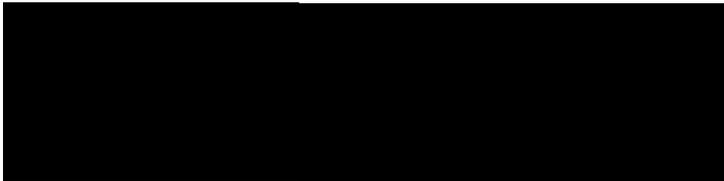


U.S. Citizenship
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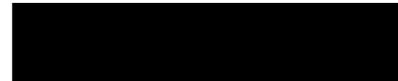
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DATE: JUN 18 2012 Office: VERMONT SERVICE CENTER

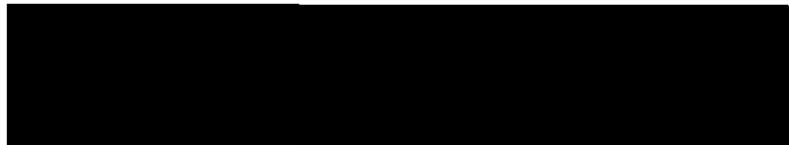


IN RE:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, (“the director”) denied the nonimmigrant visa petition and the 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:

(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(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.” In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, [U.S. Citizenship and Immigration Services (USCIS)] assesses 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. . . .

8 C.F.R. § 214.14(b)(1).

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 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 first entered the United States in or about 1979 without inspection and who last entered the United States in or about December 2004 on a B-2 visa. The petitioner was removed from the United States on or about September 3, 2008 and returned to Mexico. The petitioner filed the instant Form I-918, for U Nonimmigrant Status, on August 25, 2008. The U Nonimmigrant Status Certification (Form I-918 Supplement B) was signed by the Chief of Police, Woodlake Police Department in Woodlake, California, (certifying official). On August 25, 2005, the petitioner was the victim of domestic battery in the State of California, perpetrated by her son. The director found the petitioner ineligible for U nonimmigrant status because she failed to establish that she suffered substantial physical or mental abuse as a result of the domestic battery she suffered on August 25, 2005. On appeal, counsel for the petitioner submits a second psychological evaluation prepared by Ana Elena Araiza Cajigal.

Analysis

In the petitioner’s initial declaration, she described the altercation between herself and her son which occurred on August 25, 2005. She stated that her son became violent when she refused to give him money by throwing furniture and hitting the walls with his fists. The petitioner indicated that when she asked him to stop he hit her in the face twice, ripped the phone out of her hands, and then was able to run out of the house. The Form I-918 Supplement B notes that the petitioner was hit on the head by her son during the altercation but at Part 3.6 lists her injuries as depression and

anxiety. In the petitioner's second declaration she added that the police offered to request an ambulance to transport her to the hospital but she refused citing the lack of money. She does not indicate that she received medical treatment for any physical injuries relating to the altercation between herself and her son. The petitioner, also in her second declaration, described the emotional distress she experienced subsequent to the altercation with her son. She added further that in January 2008 she suffered a second tragic event when she was told by immigration that she had to leave the United States. The rest of her declaration describes the emotional distress she experienced as a result of her deportation and separation from her family.

In the August 2010 psychological evaluation, the licensed psychologist opined that the petitioner's exposure to a dysfunctional nuclear family when she was growing up predisposed the petitioner to suffer an emotional breakdown. The psychologist indicated that in addition to the verbal and physical violence of her son in August 2005, the petitioner's mother and maternal uncle passed away; in 2007, she was the victim of a burglary at her home; and that she was ordered deported in 2008 and was removed from the United States separating her from her minor daughter. While the psychologist diagnosed the petitioner with major depressive disorder, moderate and chronic, social phobia, generalized anxiety disorder and symptoms of post-traumatic stress disorder, she indicated that the petitioner's mental health conditions were related to a culmination of events, most of which do not relate to her being a victim of domestic abuse in 2005.

The psychologist, in a subsequent evaluation submitted on appeal, reiterates the previous diagnosis and stresses that the hostility from the petitioner's son, on whom the petitioner depended emotionally, was more threatening than other events such as robbery or harm from a third party with whom she had no emotional connection.

Upon review, the record does not demonstrate that the petitioner suffered substantial physical or mental abuse resulting from criminal activity that occurred in August 2005. The psychologist in her report on appeal again identifies a number of factors that contribute to the petitioner's current mental health condition, such as separation from her family and a dysfunctional family dynamic, and does not directly connect the petitioner's diagnoses of depression, post-traumatic stress, anxiety and phobia to the 2005 crime of which she was a victim. In addition, while the certifying official listed depression and anxiety at Part 3.6 of the Form I-918 Supplement B as the known or documented injury to the petitioner, he did not provide any details relating these conditions to the criminal activity.

The petitioner's personal statements also do not demonstrate that she suffered substantial physical or mental abuse. In her first statement, dated July 8, 2008, the petitioner stated that she suffered sadness and depression after being hit by her son and she felt that her diabetes had been adversely affected. In her August 2010 declaration, the petitioner stated that after the 2005 confrontation with her son, she was depressed, cried constantly, and thoughts of what had happened affected her sleep; however, both statements lack the probative details demonstrating that the petitioner suffered substantial physical or mental abuse. Much of her August 2010 declaration relates to how her removal from the United States has impacted her and her family, rather than the criminal activity involving her son in 2005. Overall, the evidence does not

demonstrate that the petitioner's altercation with her son in August 2005 resulted in substantial mental or physical abuse.

Conclusion

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 her 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 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 her 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.