

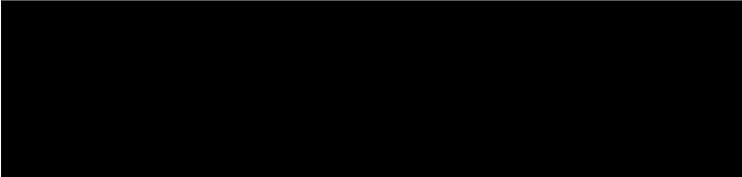
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D14



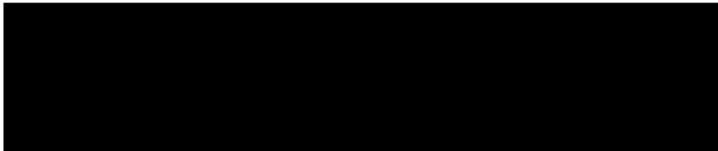
DATE: JUN 18 2012 Office: VERMONT SERVICE CENTER



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 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(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 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). 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 Honduras who claims to have entered the United States in 1991 without inspection. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on January 3, 2011. The U Nonimmigrant Status Certification (Form I-918 Supplement B) is signed by [REDACTED]

[REDACTED] The certifying official lists the statutory citation(s) as California Penal Code (C.P.C.) § 245(a)(1) – assault with a deadly weapon other than a firearm; C.P.C. § 422 – threats of a violent assault; and C.P.C. § 594(b)(2)(A) – vandalism, less than \$400. The certifying official attached the police reports and criminal complaint filed regarding the criminal activity which occurred on October 14, 2003.

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. On appeal, counsel submits a brief.

Analysis

The police report attached to the Form I-918 Supplement B indicates that a “mutual type of fight” occurred between the petitioner and R-D-¹. The petitioner was arrested and R-D- was taken to the hospital for treatment of his injuries. The police officer interviewed the petitioner and the petitioner reported that he saw R-D- slash one of his tires and leave the scene only to return about an hour later. At that time, the petitioner, who had been working on a roof, picked up a machete from his tools and approached R-D- to ask him about the slashed tire. R-D- verbally threatened the petitioner and lunged at the petitioner with a knife. The petitioner then swung his machete hitting R-D- on the head. Although R-D- began to back away, the petitioner acknowledged that he became enraged and struck R-D- a number of times with the machete until R-D- ran away. The petitioner called the police but prior to the arrival of the police, R-D- returned with other objects and attempted to spear or strike the petitioner. The petitioner acknowledged that “he had gone beyond self-defense means” and should have stopped attacking R-D- after he had struck him the first time and R-D- backed away. Although the petitioner was initially arrested for this incident he was not charged. R-D- was charged with the violations listed in Part 3.3 of the Form I-918 Supplement B.

On appeal, counsel for the petitioner asserts that as the petitioner was not charged with any criminal activity arising from this incident and, thus, the petitioner is not precluded from being recognized as a victim of qualifying criminal activity. We disagree.

According to the regulation at 8 C.F.R. § 214.14(a)(14)(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.” (Emphasis added) Although the petitioner was not ultimately charged by the District Attorney’s Office as a result of his altercation with R-D-, law enforcement authorities investigated the criminal activity, including the petitioner’s conduct, which initially resulted in the petitioner being charged with violating section 245(a)(1) of the California Penal Code (assault with a deadly weapon). In the police reports, the petitioner admitted he was angry and that “he had gone beyond self-defense means” and should have stopped attacking R-D- after he had struck him the first time and R-D- backed away. The petitioner’s admission of culpability is not erased because the District Attorney decided not to prosecute him. Because the petitioner is culpable of the qualifying criminal activity being investigated or prosecuted by the certifying agency, he cannot be considered a victim of that qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(iii). Accordingly, we see no error in the director’s assessment of the relevant evidence.

Beyond the decision of the director, even if the petitioner was found not culpable of the qualifying criminal activity, he has not established that he was the victim of substantial physical or mental

¹ Name withheld to protect the individuals’ identity.

abuse. The record reveals no physical abuse suffered by the petitioner during the altercation on October 14, 2003. The only reference in the record to mental abuse in the record occurs in the petitioner's brief December 12, 2010 statement in which he indicates that he suffers from psychological trauma at night and he is afraid to attend parties or reunions because he is afraid that something will happen. The petitioner's statement does not provide the probative details causally connecting his current emotional state to the incident occurring more than seven years ago. Overall, the evidence fails to demonstrate that he suffered substantial physical or mental abuse as a result of the altercation occurring October 14, 2003. For this additional reason, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner has not established his lack of culpability for the qualifying crime occurring on October 14, 2003. The petitioner also has not established that he suffered substantial physical or mental abuse as a result of the altercation. Accordingly, he cannot meet the requirements of section 101(a)(15)(U)(i) of the Act and his petition will remain 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.