

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **MAR 28 2012** 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 (“the director”), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision will be withdrawn in part and affirmed in part. The appeal will be dismissed and 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

U nonimmigrant classification may be granted to an alien who demonstrates that he or she has, in pertinent part, “suffered substantial physical or mental abuse as a result of having been a victim of [qualifying] criminal activity” and “has been helpful . . . to a Federal, State, or local law enforcement official . . . investigating or prosecuting [qualifying] criminal activity.” Section 101(a)(15)(U)(i)(I), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I), (III).

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(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(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." The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 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; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in July 2001 without being inspected, admitted or paroled by an immigration officer. On June 8, 2010, the petitioner filed a Form I-918 U petition along with a *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) to obtain, in part, evidence from the certifying agency regarding the petitioner's helpfulness to the investigation or prosecution of the qualifying criminal activity. In response, the petitioner submitted a second Form I-918 Supplement B. The director denied the petition, in part, because although the petitioner reported her husband's violence toward her to the police, she failed to provide any further assistance to an investigation or prosecution of the domestic violence situation for which her husband was arrested. The director also denied the petition because the petitioner failed to establish that she suffered substantial physical or mental abuse. On appeal, counsel submits a brief in which she states that the director imposed a heightened burden on the petitioner by requiring her to submit evidence beyond the Form I-918 Supplement B to establish her helpfulness to law enforcement authorities. Counsel states further that the petitioner has suffered substantial physical and mental abuse as the result of being a victim of domestic violence at the hands of her spouse.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we withdraw the director's determination that the petitioner was not helpful to law enforcement authorities, but affirm his finding that the petitioner did not suffer substantial physical or mental abuse.

The record contains two law enforcement certifications, both of which were signed by the [REDACTED] (certifying official) on December 29, 2009 and November 10, 2010, respectively. On both law enforcement certifications the certifying official indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying domestic violence criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. According to an attached police report, the petitioner called the police on September 15, 2002 after her husband, who was drunk, pushed and kicked her because she failed to open the front door for him fast enough when he was banging on it to be let into the house. The responding police officer noted a scratch on the petitioner's right arm. The report indicated that the petitioner's husband was cited for assault in the fourth degree (DV)¹, booked, and held for court.

¹Assault in the 4th degree (Wash. Rev. Code Ann. § 9A.36.041 (West 2012)):

(1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the

In his denial decision, the director stated that the evidence only established that the petitioner reported the physical altercation between herself and her husband to the police but did not assist further with the investigation or prosecution of her husband for assault. On appeal, counsel states that the certifying official in two separate law enforcement certifications certified the petitioner's helpfulness to law enforcement authorities, and the director cannot require the petitioner to submit additional evidence of her helpfulness.

The director's implicit finding that the petitioner did not provide ongoing assistance in the investigation or prosecution of her husband is not supported by the record. The regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that "since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested." Here, the certifying official provided no indication at Part 4 of either Form I-918 Supplement B that the petitioner was unhelpful to law enforcement authorities in the investigation or prosecution of the domestic violence crime at any time; that she was requested to provide additional information, but did not; or that she unreasonably refused to assist the police. Although we are unaware of the outcome of the assault charge that was lodged against the petitioner's husband, there is no evidence that the petitioner failed to provide ongoing cooperation to law enforcement authorities. To the contrary, the certifying official's reiteration of the petitioner's helpfulness through the submission of a second Form I-918 Supplement B more than 10 months after he completed the first Form I-918 Supplement B is evidence that the certifying agency did not believe that the petitioner had refused or failed to provide reasonable assistance since the initiation of her cooperation with the certifying agency. Accordingly, we withdraw the director's finding that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity.

We do, however, concur with the director that the evidence fails to establish that the petitioner suffered resultant substantial or mental abuse.

The petitioner stated in her June 3, 2010 declaration that she endured sexual, physical and mental abuse by her husband throughout her marriage and briefly described an incident where her husband threw her and their children out of their house during winter, along with the children's mattresses, with nowhere to go. The petitioner asserted further that her husband called her a whore, scratched her arm, punched her chest, pushed and then kicked her during the incident that led to his arrest. The petitioner indicated that she felt sad and depressed because of everything that had been happening, particularly for her children who witnessed the incident that led to her husband's arrest. The petitioner stated further that she has been seeking counseling and submitted a computer print-out from [REDACTED] showing dates that she saw [REDACTED]

first, second, or third degree, or custodial assault, he or she assaults another.
(2) Assault in the fourth degree is a gross misdemeanor.

In his denial decision, the director noted that the petitioner failed to submit a letter from a doctor stating under what circumstances the petitioner sought his or her services at Sunnyside. The director stated further that the circumstances of the certified domestic violence crime did not equate to substantial physical or mental abuse. On appeal, counsel states that the director ignored the evidence in the record regarding the years of abuse that the petitioner endured as well as its effects on her. Counsel states that in addition to the petitioner's declaration, the police reports and the evidence of her mental health counseling, the record contains an Order of Protection against the petitioner's husband, which shows ongoing abuse by the petitioner's husband against her. Regarding the director's discussion of the petitioner's mental health counseling, counsel states that the director's requirement of a medical letter "reaches beyond the standard of proof contemplated by both the statute and the regulations in the area of doctor-patient confidentiality."

Our review of the record fails to demonstrate that the petitioner suffered substantial physical or mental abuse. At Part 3.5 of the Form I-918 Supplement B where the certifying official is to describe any known or documented injuries to the petitioner, the certifying official wrote "see attached report." The attached police report indicated that when the officer responded to the 911 emergency call, he saw a scratch on the petitioner's right arm, and that the petitioner told him that she had been pushed and kicked by her husband. The responding officer did not note any other injuries to the petitioner, or indicate that the petitioner needed to seek medical attention for her injuries. The petitioner stated generally in her June 3, 2010 declaration that she felt sad and depressed because of the incident; however, she did not provide any probative details of the effects that the certified criminal activity had on her appearance, health, and physical or mental soundness.

The summary of the petitioner's counseling at Sunnyside indicates that she initially sought services in March 2009, more than six years after the certified criminal activity that took place in September 2002. The date of her last services at Sunnyside occurred on August 5, 2009, prior to her filing the instant Form I-918 U petition in June 2010. Although a petitioner is not required to submit any evidence that she believes could violate her doctor/patient confidentiality, a petitioner bears the burden of proof to establish that any abuse she suffered as a result of qualifying criminal activity was substantial. 8 C.F.R. § 214.14(c)(4). Here, the six-year passage of time from the date of the qualifying criminal activity until the petitioner initially sought counseling, along with its short duration, does not establish the link between the qualifying criminal activity and resulting substantial abuse. Neither counsel nor the petitioner explains why the petitioner did not seek counseling prior to 2009 and continued with the counseling intermittently for only six months.

We acknowledge the Order of Protection, dated November 20, 2006 and valid for three years, which the petitioner obtained against her husband. While we do not minimize the effects of domestic violence on a family's well-being, the record overall does not demonstrate that the certified criminal activity that occurred in September 2002 aggravated any of the petitioner's existing conditions or caused any new mental or physical health conditions resulting in substantial physical or mental abuse.

Conclusion

The petitioner has established that she was the victim of a qualifying crime, that she possessed information concerning the qualifying criminal activity, and that she was helpful to local law enforcement investigating or prosecuting the criminal activity. However, 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.

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.

ORDER: The appeal is dismissed. The petition remains denied.