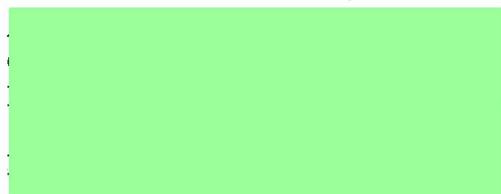


(b)(6)

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



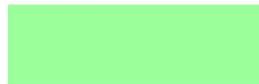
U.S. Citizenship
and Immigration
Services



Date: APR 03 2013

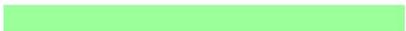
Office: VERMONT SERVICE CENTER

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 AAO inappropriately applied the law 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 in accordance with the instructions on 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner failed to establish that he suffered substantial physical or mental abuse as a result of having been the victim of a qualifying criminal activity and because he is inadmissible to the United States and his form I-192, Advance Permission to Enter as a Nonimmigrant, was denied. On appeal, counsel submits a brief and additional evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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 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) will assess 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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 was paroled into the United States on July 28, 2010. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918) on August 17, 2010. On March 8, 2011, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of his claim. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility and the petition was denied accordingly. The director’s decision indicates that the petitioner met all the other eligibility requirements at 8 C.F.R. § 214.14(b) and the only issues on appeal are whether the petitioner has suffered substantial abuse as a result of his victimization and his inadmissibility to the United States. On appeal, counsel contends that it is clear that the petitioner has “suffered substantial mental and emotional abuse and anguish as a result of the criminal activit[y]” and that the Form I-192 should be granted to waive his inadmissibility.

Analysis

Substantial Physical or Mental Abuse

De novo review of the record fails to demonstrate that the petitioner suffered substantial physical or mental abuse as a result of his victimization. In his July 30, 2010 affidavit, the petitioner recounts the extortion of which he was a victim, stating that after he agreed to pay smugglers \$1,500 to bring his brother-in-law into the United States, the smugglers called him and demanded \$3,000. The smuggler threatened to kill the petitioner's brother-in-law if he did not agree to pay the fee. After the petitioner contacted law enforcement authorities, he went to Arizona in order to help police officers arrest the smugglers. The petitioner stated that since this incident, he often feels depressed and is concerned for the safety of his family. The petitioner maintained that he suffers from anxiety attacks, has nightmares, and has lost weight. According to the petitioner, he was going to start therapy. In a second affidavit submitted in response to the RFE, the petitioner repeated much of what he stated in the first affidavit, but did not discuss his therapy or any other treatment he may have sought.

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of his assault. Although the petitioner declared in his affidavit that he is depressed and has anxiety, he has not presented any testimony or documentation that he has sought medical or psychological attention for any condition related to his victimization. The Form I-918 Supplement B and the accompanying police report also do not demonstrate that the crime against the petitioner resulted in substantial abuse. Neither the reporting officer nor the certifying official indicate any known injuries to the petitioner.

On appeal, counsel contends that it is clear from a psychological report previously submitted that the petitioner has suffered mental and emotional abuse and that the stress created rises to the level of post-traumatic stress disorder. Counsel further asserts that the petitioner continues to suffer from depression and anxiety as a result of his victimization. Counsel provides no evidence to support these contentions. USCIS has not received any psychological report or information regarding any psychological treatment the petitioner may have received.

While the extortion and threats have clearly impacted the petitioner's life, the evidence fails to demonstrate that he suffered substantial physical or mental abuse as a result of his victimization. Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Inadmissibility

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in conjunction with a Form I-918 U petition in order to

waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application, the AAO cannot address counsel's claims regarding why the petitioner's waiver request should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record shows, and the petitioner admits, that he was convicted of violating California Penal Code (CPC) §§ 647(B) (Disorderly Conduct: Prostitution), 242 (Battery) and 594(A) (Vandalism). The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held that a conviction for disorderly conduct under CPC § 647(B) involves moral turpitude when related to prostitution. *Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012); *see also Hudson v. Esperdy*, 290 F.2d 879 (2d Cir.), *cert. denied*, 368 U.S. 918 (1961) (loitering for lewd purposes); *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (soliciting charge). Counsel has not provided any evidence or argument to show that the petitioner's conviction did not involve moral turpitude.¹ The petitioner is consequently inadmissible under sections 212(a)(2)(A)(i)(I) of the Act for having been convicted of an offense involving moral turpitude.

The record also shows and the petitioner admitted on his Form I-918 that he knowingly encouraged, induced or aided an alien to enter the United States illegally and that he entered the United States without admission or parole in or about 1999 and stayed in the United States until he was ordered removed on May 2, 2002. The petitioner subsequently reentered the United States without admission or parole and his removal order was reinstated on July 20, 2010. The petitioner is consequently inadmissible under sections 212(a)(6)(E) and 212(a)(9)(A)-(C) of the Act.

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I), (6)(E) and (9)(A)-(C) of the Act. Counsel does not contest the beneficiary's inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determinations.

The director denied the petitioner's application for a waiver of inadmissibility and 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).

Conclusion

The petitioner has not established that he suffered substantial physical or mental abuse as a result of his victimization and he, therefore, cannot meet the requirement of subsection 101(a)(15)(U)(i)(I) of the Act. The petitioner also has not established that he is admissible to the United States or that his

¹ Where the alien bears the burden of proof to establish eligibility for the benefit sought, the alien also bears the burden of showing that the criminal statute has been applied to conduct that did not involve moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 703 n.4 (A.G. 2008).

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Page 6

grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3).

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, the petitioner has not met his burden of showing eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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