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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

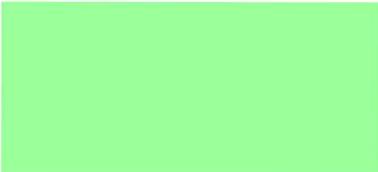


Date **AUG 28 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

APPLICATION: 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO will be withdrawn and the matter will be remanded to the director for further action.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. On November 1, 2012, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). In his decision on the Form I-918 U petition, the director stated that the petitioner did not establish she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The petitioner, through counsel, timely filed an appeal with the AAO. The appeal was dismissed as the petitioner did not establish that she suffered substantial physical or mental abuse as the result of her victimization. In addition, the AAO noted that the petitioner is inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, was denied. The petitioner, through counsel, timely filed the instant motion with the AAO.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). On motion, the petitioner, through counsel, asserts that the petitioner suffered substantial mental abuse as a result of her victimization as shown by her recent diagnosis of significant mental health conditions. In support of his claim, counsel submits a psychological evaluation for the petitioner that was previously unobtainable. As the petitioner, through counsel, has submitted documentary evidence to support her new claim, the motion to reopen will be granted.

*Applicable Law*

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;

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(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: . . . witness tampering; . . . 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, United States 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. 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[.]

8 C.F.R. § 214.14(b)(1).

In addition, 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 Mexico who states that she last entered the United States in 2007 without admission, inspection or parole. With her Petition for U Nonimmigrant Status (Form I-918), the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification, on which a New York State Department of Labor official certified that the petitioner was the victim of witness tampering under New York Penal Law, a qualifying crime. The certifying official attested to the petitioner’s possession of information regarding the crime and her helpfulness in the law enforcement agency’s

investigation of the offense. The director denied the petition for failure to establish that the petitioner suffered substantial physical or mental abuse as a result of her victimization and the AAO dismissed the petitioner's subsequent appeal on May 24, 2013.

#### *Substantial Physical or Mental Abuse*

In her September 9, 2011 affidavit, the petitioner recounted that she suffered exploitative work conditions under her former employer, she was told to lie to New York Department of Labor (DOL) officials regarding her work hours and wages, and she was threatened to be fired if she did not comply. The petitioner claims that she was worried about her lies but she "felt powerless and helpless" because she was undocumented. In her affidavit dated August 3, 2012, the petitioner claims she was terrified to lose her source of income because she supports her children and mother in Mexico. She believed that she could never escape her previous employer but felt "tremendous anxiety and guilt" about lying to the DOL officials. She states that because of the mistreatment by her former employer, she is nervous and anxious, and because he required that she wear provocative clothing, she relived the sexual abuse she suffered as a child.

In his affidavit dated June 15, 2013 and submitted on motion, [REDACTED] a licensed clinical psychologist, diagnoses the petitioner with two significant, chronic, recurrent and severe mental health disorders. [REDACTED] indicates that the petitioner's "symptoms and disturbed mental state is correlated with the type of psychological injury produced by persistent stressful situations such as being coerced to lie to people in authority (e.g., New York Department of Labor)." He reports that according to the petitioner, her father physically abused her mother and she believes her mother worked as a prostitute. [REDACTED] also noted that the petitioner was physically abused by her children's father, suffered sexual abuse as a child, and attempted suicide on three separate occasions. [REDACTED] reports that the petitioner's disorders are "significantly related – and have been exacerbated – to her negative experiences while working" for her former employer, and he recommends that she receive therapy and possible psychotropic medication. [REDACTED] states that the results of psychological tests and clinical data show that the petitioner continues to suffer from "significant, chronic, psychiatric symptoms." [REDACTED] links these symptoms to the petitioner's victimization from the witness tampering and the aggravation of her pre-existing conditions.

A preponderance of the evidence submitted below and on motion demonstrates that the petitioner suffered substantial mental abuse as the result of her victimization. The Form I-918 Supplement B, the statements from the petitioner, and the mental health documents provide probative details of the criminal activity and the nature and duration of the petitioner's resultant injuries as well as the serious harm to the petitioner's mental health. Consequently, the petitioner has established the criteria at section 101(a)(15)(U)(i) of the Act, and the AAO's prior decision is withdrawn.

#### *Admissibility*

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. A full review of the record in this case establishes that the petitioner is

inadmissible under subsection 212(a)(6)(A)(i) of the Act (present without being admitted). The director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated November 1, 2012. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the sole ground for denial of the petitioner's Form I-918 U petition has been overcome, we will return the matter to the director for reconsideration of the Form I-192.

*Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met. On motion, the petitioner has overcome the director's ground for denial and has established her statutory eligibility for U nonimmigrant classification. Because the petitioner remains inadmissible to the United States, the matter will be remanded to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on the Form I-918 U petition, which shall be certified to the AAO for review if adverse to the petitioner.

**ORDER:** The May 24, 2013 AAO decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the AAO for review.