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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

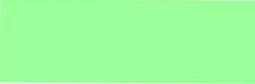


U.S. Citizenship
and Immigration
Services



Date: **JUL 10 2013**

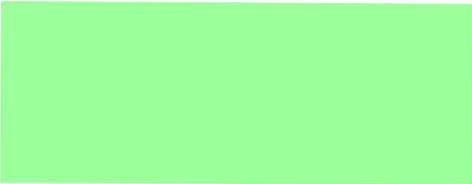
Office: VERMONT SERVICE CENTER

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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting 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 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 determined that the petitioner did not establish that she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The petition was denied accordingly. On appeal, counsel submits a brief and copies of previously submitted evidence.

Applicable Law

Section 101(a)(15)(U)(i) of the Act provides U nonimmigrant classification to aliens who have suffered substantial physical or mental abuse as a result of certain qualifying criminal activity and who demonstrate their past, present or future helpfulness to law enforcement officials investigating or prosecuting the criminal activity. Section 101(a)(15)(U)(iii) of the Act defines the qualifying criminal activity as including, in pertinent part, witness tampering. *See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria).

The regulations governing the U nonimmigrant classification at 8 C.F.R. section 214.14(a) provide for certain definitions, and state, in pertinent part:

(14) *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.

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 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 U.S. Citizenship and Immigration Services (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 on January 31, 2005, without admission, inspection or parole. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on September 21, 2011. The petitioner submitted a Form I-918 Supplement B in which the certified crime was witness tampering under New York Penal Law, a qualifying crime. On March 30, 2012, the director issued a Request for Evidence (RFE) that, among other things, the petitioner was the victim of a qualifying crime and that she had suffered substantial abuse as a result of qualifying criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director determined that the petitioner did not establish that she had suffered substantial physical or mental abuse as the result of qualifying criminal activity. The petition was denied accordingly.

On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because she suffered substantial abuse as the result of qualifying criminal activity given the duration of the harm and that there were a series of acts that rise to the level of substantial abuse, and that USCIS failed to apply the correct standard of review.

Analysis

Upon review, we find no error in the director's decision to deny the petition. At Part 3.6 of the Form I-918 Supplement B, the certifying official does not describe any known or documented injury to the petitioner and instead refers to the petitioner's affidavit. In her August 31, 2011 affidavit, the petitioner recounted that she suffered exploitative work conditions under her former employer, and that her former employer told her to lie to Department of Labor officials. She also recalled that she was forced under threat of firing to sign a document with incorrect information regarding her hours and pay. The petitioner indicated that because of everything going on at her job, she began to experience nervousness, anxiety and distress, and she was frightened about what might happen if she

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did not do as her former employer asked. In her June 17, 2012 affidavit, the petitioner again stated that she did not want to risk losing her job, and that she suffered from nervousness, anxiety, and distress. The petitioner also noted that she suffers from symptoms of depression and has trouble sleeping, and that she felt guilt and shame for lying but felt she had to lie in order to keep supporting her family in Honduras. She stated that things are better for her than when she was working for her former employer, but that she felt as though her life is not “back to where it was before all that started.” The petitioner also submitted a letter from [REDACTED] who stated that she noticed that after the investigation began, the petitioner appeared distressed and nervous, and she was sad. [REDACTED] also noted that the petitioner is doing better, but is not as happy as she was before she started working at the restaurant.

The petitioner submitted a letter from [REDACTED] a forensic social worker, dated June 19, 2012. [REDACTED] stated that the petitioner suffers from symptoms of depression and reports sleeping all day. [REDACTED] described how the petitioner felt guilty about lying to the Department of Labor, but she felt hopeless because she believed she had no options because of her immigration status.

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of her victimization. The petitioner credibly described her fear and anxiety over being told to lie to the Department of Labor and the petitioner and [REDACTED] reasonably explain why the petitioner has been unable to obtain mental health treatment. Nonetheless, their statements are insufficient to demonstrate that the witness tampering caused the petitioner to suffer substantial mental abuse. The petitioner and [REDACTED] generally describe the petitioner as suffering from symptoms of depression, but they fail to probatively discuss the effects of the victimization on the petitioner’s physical and mental health. The petitioner also states that things are better in her life now that she is no longer working for her former employer. Neither the petitioner nor [REDACTED] discuss, for example, any permanent or serious harm the incident caused to the petitioner’s appearance, health, or physical or mental soundness.

On appeal, counsel also contends that USCIS failed to understand the harm that victims of non-violent qualifying crimes face, such as the emotional and mental abuse suffered by the petitioner. We find no error in the director’s application of the regulations at 8 C.F.R. § 214.14(a)(8), (b)(1), which include emotional and psychological harm in the definition of physical and mental abuse and the factors and standard used to evaluate whether an alien has suffered substantial abuse.

In his brief, counsel further asserts that USCIS did not apply the credible evidence standard and that the petition should not be denied unless the evidence is not credible or it otherwise fails to establish eligibility. Counsel is correct that all credible evidence relevant to the petition must be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4). However, this evidentiary standard is not equivalent to the petitioner’s burden of proof. *See* 8 C.F.R. § 214.14(c)(4). Accordingly, the mere submission of evidence that is relevant and credible may not always suffice to meet the petitioner’s burden of proof. Here, the petitioner has submitted relevant and credible evidence

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NON-PRECEDENT DECISION

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regarding her exploitative working conditions and the witness tampering of which she was a victim. However, the preponderance of the relevant evidence does not show that she suffered substantial physical or mental abuse as the result of her victimization under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

The petitioner is also inadmissible to the United States under section 212(a)(6)(A) of the Act for being present in the United States without admission or parole, and her Form I-192, Application for Advance Permission to Enter as Non-Immigrant, was denied. Consequently, the petitioner remains ineligible for U nonimmigrant classification for this additional reason. *See* Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14); 8 C.F.R §§ 214.1(a)(3)(i), 212.17, 214.14(c)(2)(iv).

Conclusion

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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