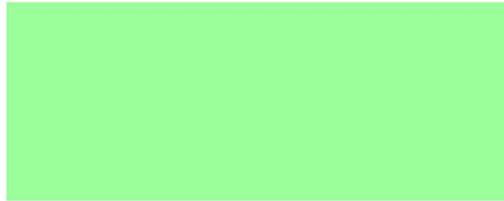




U.S. Citizenship
and Immigration
Services

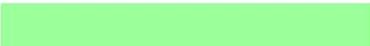
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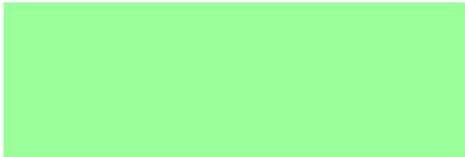
Office: VERMONT SERVICE CENTER

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:

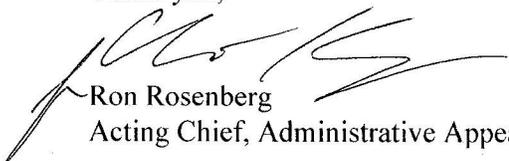


INSTRUCTIONS:

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. § 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 Mexico who claims to have entered the United States in June 2009 without being admitted, inspected or paroled by an immigration officer. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U petition) on September 21, 2011. The petitioner submitted a Form I-918 Supplement B in which an official of the New York State Department of Labor certified that the petitioner was the victim of witness tampering under New York Penal Law, a qualifying crime. On April 4, 2012, the director issued a Request for Evidence (RFE) that, among other things, the petitioner 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 the 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. According the counsel, the cumulative effect of the series of acts to which the petitioner was subjected, which aggravated the petitioner's pre-existing trauma, amounts to substantial abuse. Counsel additionally asserts that USCIS failed to apply the correct standard of review when analyzing the evidence of record.

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 30, 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 New York State Department of Labor (DOL) officials investigating her former employer's violations of New York State labor laws. She also recalled that

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she was forced under threat of firing to sign documents with incorrect information regarding her hours, pay and age. 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 did not do as her former employer asked. In her June 25, 2012 affidavit, the petitioner stated that she knew what the perpetrator was doing was unlawful but the prospect of losing her source of income that she needed to support her mother and sister in Mexico was terrifying for her. The petitioner stated that being told to lie or thinking about losing her job caused her to experience nervousness, anxiety and distress. The petitioner also noted that her experience with the perpetrator caused her to relive the trauma that she experienced from her abusive father. According to the petitioner "things are better" for her since she left her former place of employment, but she still experiences fear and panic about what could happen, such as being deported or victimized again.

The petitioner submitted a letter from [REDACTED] a forensic social worker, dated June 19, 2012. [REDACTED] stated that although the certified crime was witness tampering, the manner in which the petitioner was treated by the perpetrator is similar to domestic violence. [REDACTED] described how the petitioner felt anxious and nervous during the DOL investigation, and that lying to the DOL investigators heightened the petitioner's feelings of powerlessness and exacerbated her pre-existing emotional trauma caused by her abusive father.

While the record shows that the petitioner was the victim of a qualifying crime and endured exploitative and abusive working conditions, the relevant evidence fails to establish that the petitioner suffered substantial physical or mental abuse as a result of her victimization. The petitioner credibly described the anxiety and fear that she experienced over being told to lie to DOL investigators, and the petitioner and [REDACTED] reasonably explained why the petitioner has been unable to obtain mental health treatment, but their statements are insufficient to establish that the petitioner suffered substantial abuse. [REDACTED] stated that the petitioner was the victim of domestic violence as a child and "that the manner in which she was treated by her employer, is similar to that of a victim of domestic violence," but [REDACTED] did not demonstrate that the witness tampering of her former employer caused her substantial abuse. While [REDACTED] and the petitioner described her feeling anxious, fearful and powerless during the DOL investigation and the petitioner's enduring fear of seeing her former employers or being deported, the petitioner also indicated that her life has improved since she cooperated with the DOL investigation. The record does not demonstrate that, as a victim of witness tampering, the petitioner has endured any permanent or serious harm to her appearance, health, or physical or mental soundness. In sum, the petitioner and [REDACTED] fail to describe effects of the witness tampering on the petitioner's physical and mental health that resulted in substantial physical or mental abuse.

On appeal, counsel 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 regulation at 8 C.F.R. § 214.14(a)(8), (b)(1), which includes 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 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 being a victim of witness tampering 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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