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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 13 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 (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal.[1] 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 she suffered substantial physical or mental abuse as a result of having been the victim of a qualifying criminal activity and because she is inadmissible to the United States and her 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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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
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> (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:

[1] On appeal, counsel requested that the Vermont Service Center first treat the appeal as a motion to reopen or reconsider. The director determined that the appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

> rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.][2]

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 claims to have entered the United States on October 17, 2006 without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918) on April 7, 2011. On November 14, 2011, the director issued a Request for Evidence to provide the petitioner with an opportunity to submit additional evidence in support of her claim. The petitioner responded with copies of previously submitted

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[2] The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 3013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

evidence and a police report which the director found insufficient to establish the petitioner's eligibility. 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 her victimization and her inadmissibility to the United States. On appeal, counsel contends that the petitioner suffered financial and emotional harm as a result of her victimization.

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 her victimization. In her declaration, the petitioner recounted her interactions with her former boss but did not describe in any probative detail any injury or harm to her physical person or harm to or impairment of her emotional or psychological soundness. In her mother, 's declaration, her mother recounts the extortion of which she and her daughters were a victim, stating that her former employer refused to pay her and her daughters for the work they had performed for him, and when they called him to inquire about when they would be paid, he threatened to call immigration. Ms. stated that she is afraid of this man. On the Form I-918 Supplement B, the certifying official noted that the petitioner was sexually harassed, intimidated and yelled at, and listed the resulting injury to the victim as the petitioner feeling fear and helplessness. The police report did not describe any injury or harm to the petitioner's physical person or impairment to her emotional or psychological soundness.

In her mother's statement on appeal, Ms. recounts that she was traumatized by her interactions with her former employer and that she and her daughters couldn't sleep, had headaches and stomach aches, and suffered from nervousness. In the petitioner's statement on appeal, she states that she was afraid. Counsel also submits a letter from the Development Director of the Colorado Immigrant Rights Coalition, who stated that when the petitioner's mother contacted her to report that she had not been paid by her former employer and that he had threatened to call immigration, Ms. was frightened and worried. Ms. also provides her opinion that Ms. was suffering from "severe emotional distress" and physical distress caused by stress because she did not have money to buy groceries.

The evidence in the record fails to establish that the petitioner suffered substantial physical or mental abuse as a result of her victimization. The petitioner has not presented any testimony or documentation that she has sought medical or psychological attention for the headaches and stomach aches from which her mother stated she suffered. The Form I-918 Supplement B and the accompanying police report also do not demonstrate that the qualifying crime against the petitioner resulted in substantial abuse. Although the certifying official noted on the Form I-918 Supplement B that the petitioner suffered from sexual harassment and the petitioner discussed the effects the sexual harassment had on her, there is no evidence that any substantial abuse occurred as a result of the

petitioner's victimization from extortion. The statement that the petitioner felt fear and helplessness does not demonstrate that there was any injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." *See* 8 C.F.R. § 214.14(a)(8).

On appeal, counsel contends that the petitioner suffered financial harm and fear. While the extortion and lack of payment may have impacted the petitioner's life, the evidence fails to demonstrate that she suffered substantial physical or mental abuse as a result of her victimization. As stated in the regulations, "[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). Financial harm is not included in the definition, and the petitioner has not demonstrated that her victimization has resulted in any physical harm or has impacted her emotional or psychological soundness.

Counsel further asserts that the Vermont Service Center did not clearly describe the level of detail required. The burden of proof in these proceedings is described in the regulation at 8 C.F.R. § 214.14(c)(4), and the eligibility criteria regarding substantial physical and mental abuse are described in 8 C.F.R. §§ 214.14(a)(8) and (b)(1).

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 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 she entered the United States without being inspected, admitted or paroled, accrued unlawful presence in the United States for over one year, and does not have a valid passport. The petitioner is consequently inadmissible under sections 212(a)(6)(A), 212(a)(7)(B) and 212(a)(9)(B) of the Act.[3]

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(6), (7) and (9) of the Act. Counsel does not contest the beneficiary's inadmissibility on appeal. The director denied the petitioner's application for a waiver of

[3] AAO acknowledges counsel's note in her brief that the petitioner was recently charged with several offenses as a result of a shoplifting incident. As the charges have not resulted in a conviction as of yet, we will not address them here except to say that any conviction may result in a further ground of inadmissibility.

inadmissibility and 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).

Conclusion

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