

(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: **MAY 23 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:

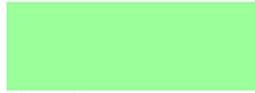

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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

The director denied the petition because the petitioner did not establish that he suffered substantial physical or mental abuse as the result of having been a victim of a qualifying crime or criminal activity. On appeal, the petitioner's representative submits a brief and additional evidence.

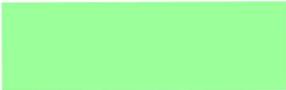
Applicable Law

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;

(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: 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



foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

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. . . .

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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who entered the United States on or about July 1, 2007 without inspection. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on March 19, 2012. On June 7, 2012, the director issued a Request for Evidence (RFE) requesting that the petitioner submit additional evidence relating to his victimization. In response to the RFE, the petitioner’s representative submitted a brief and additional evidence, which the

¹ 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, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed.

On appeal, the petitioner's representative claims that the petitioner suffered serious mental harm as a result of the criminal incident. Counsel also claims that the director erred in determining that a "series of incidents" is a requirement for eligibility for U nonimmigrant status.

Claimed Criminal Activity

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] of Hancock and Washington Counties, Prosecutorial District #7, Maine (certifying official). The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to Maine Revised Statutes (M.R.S.) seq. 8382 17-A 207(1)(A), assault, and M.R.S. seq. 4959 17-A 801(1)(A), criminal mischief, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that the petitioner "was lured to a rural site by his ex-girlfriend . . . and her friends where he was then assaulted and threatened. [The petitioner's ex-girlfriend] repeatedly punched [the petitioner] in the face, choked him with his rosary necklace, and threatened his life." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner suffered "bruises and scrapes on his head and neck, as well as reported fear and anxiety as a result of the assault."

Substantial Physical or Mental Abuse

At Part 3.6 of the Form I-918 Supplement B, the certifying official states the petitioner suffered "bruises and scrapes to his head and neck" from the assault, and that according to the petitioner, he is suffering "fear and anxiety." Medical documents and photographs in the record support the claim of physical injuries. In her appeal brief, the petitioner's representative states the petitioner suffers from "anxiety, paranoia, depression, sleeplessness and generalized fear" as a result of the assault. In his statement in support of the Form I-918 U petition, the petitioner states he was anxious, had sleeping problems, and he trusts people less after the attack. In a mental health evaluation dated June 28, 2012, licensed social worker [REDACTED] indicates that according to the petitioner, he has difficulty trusting people, and she diagnoses him with adjustment disorder with anxiety. In a psychiatric assessment dated August 24, 2012, [REDACTED] diagnoses the petitioner with post-traumatic stress disorder (PTSD) and adjustment disorder with depressed mood. She indicates that the petitioner struggles when "talking about the most intimate details of the assault, which is quite consistent with PTSD." In her statement dated August 22, 2012, the petitioner's mother states that according to the petitioner, the people who assaulted him called him derogatory names. [REDACTED] indicates that the petitioner's psychological problems will persist longer because the assault involved an "anti-Hispanic bias." The petitioner's mother states the assault changed the petitioner completely, he shut himself off from her and his friends, he began drinking more, and he became paranoid. The record also includes additional statements from the petitioner's friends and teachers, attesting to the petitioner's change in personality and mental health after the assault. The petitioner claims that he fears for his safety - that his attackers may attack him again.

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

In addition, as the certifying official indicated on the Form I-918 Supplement B, the petitioner possesses information concerning the qualifying criminal activity, was helpful to law enforcement authorities, and the criminal activity occurred in the United States.

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, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, 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 August 9, 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 grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192.

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 C.F.R. § 214.14(c)(4). On appeal, the petitioner has overcome the director's grounds for denial and has established his 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 director's 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 Administrative Appeals Office for review.