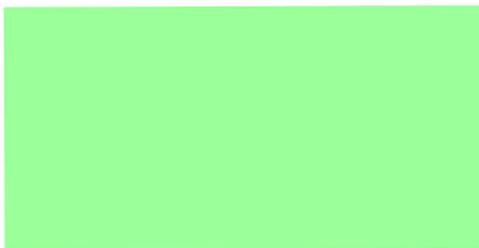


(b)(6)

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



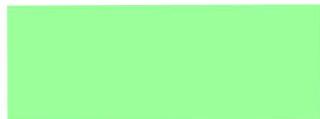
U.S. Citizenship
and Immigration
Services



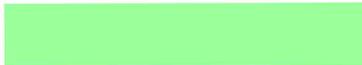
Date: **MAY 24 2013**

Office: VERMONT SERVICE CENTER

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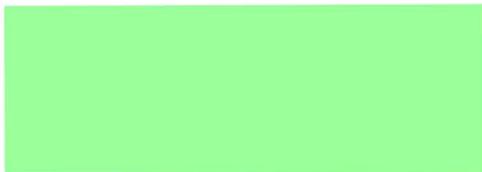


IN RE: Petitioner:



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, 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 Mexico who states that she last entered the United States in 2007 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 May 16, 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 the exacerbation of pre-existing trauma, 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 September 9, 2011 affidavit, the petitioner recounted that she suffered exploitative work conditions under her former employer, and that after a New York Department of Labor (DOL) investigation, her former employer told her to lie to the DOL officials. The petitioner's former employer forced her to sign fake records of her hours, tips, and wages, and threatened to fire her if she did not comply. The petitioner indicated that she was worried about having to lie. The petitioner also noted that she felt ashamed and helpless when

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her former employers treated her unlawfully, and that based on everything she endured at that workplace, she experienced nervousness, anxiety, distress and developed a rash. In her August 3, 2012 affidavit, the petitioner again stated that she felt trapped and powerless to escape the abusive working conditions, that she felt guilty about lying, and that she developed a rash that disappeared after she left her job. She recounted that the fear of losing her job was terrifying to her because she was the primary supporter for her minor children and her mother in Mexico. The petitioner also noted that the financial pressure reminded her of a severe depression she suffered when she was 19 years old. She recalled that the control her former employer had over her by making her dress provocatively and watching her on camera reminded her of sexual abuse she faced as a child in Mexico. She stated that things are better for her than when she was working for her former employer, but that she still feels fear about whether she will be deported or victimized again.

The petitioner also submitted a letter from [REDACTED] a forensic social worker, dated July 31, 2012. [REDACTED] stated that the petitioner suffered feelings of anxiety after the DOL began their investigation of her former employer, and guilt about the lies she told the DOL officials. She noted that the petitioner felt helpless and developed a rash during the investigation which disappeared after she left her job. [REDACTED] reported that the petitioner attempted suicide twice before. She reported that because of the witness tampering, the petitioner cannot articulate her goals for the future. [REDACTED] determined that the petitioner suffers from mental health issues, "perhaps depression or post-traumatic stress disorder," but does not make any clear diagnosis.

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 being fearful and anxious, 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, the petitioner's representative also contends that USCIS fails 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 her brief, the petitioner's representative 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 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 section 212(a)(9)(C) for entering the United States after having been removed from the United States, 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.