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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: **NOV 15 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

PETITIONER: [REDACTED]

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:

SELF-REPRESENTED

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
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) 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 submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), nor did he establish the eligibility criteria at section 101(a)(15)(U)(i) of the Act. On appeal, the petitioner submits a Form I-918 Supplement B 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: . . . false imprisonment; . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(8) *Physical 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.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: . . . felonious assault The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

* * *

(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

In addition, section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918.

The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 [U.S. Citizenship and Immigration Services (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 petitioner is a native and citizen of Mexico who entered the United States in 2004 without inspection. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) on June 19, 2012,¹ without the Form I-918 Supplement B. The director subsequently denied the petition because the petitioner failed to submit a properly certified Form I-918 Supplement B. The petitioner appealed the denial of the Form I-918 U petition.

On appeal, the petitioner submits the Form I-918 Supplement B and apologizes for not filing it with the initial application and explains that he wanted to send in the completed package at one time.

¹ The petitioner filed another Form I-918 U petition on June 18, 2012, receipt number [REDACTED] which was denied on January 24, 2013.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition based upon lack of required initial evidence.

The petitioner filed his Form I-918 U petition on June 19, 2012 and was required to submit a Form I-918 Supplement B as initial evidence. 8 C.F.R. § 214.14(c)(2)(i). Although on appeal the petitioner submitted a Form I-918 Supplement B, it was not submitted as initial evidence with his Form I-918 U petition.² According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), “[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . .”. In addition, this Form I-918 Supplement B, dated September 17, 2012, was not signed by the certifying official within the six months preceding the June 19, 2012 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i). As the petitioner failed to submit all required initial evidence with his Form I-918 U petition, his Form I-918 U petition must remain denied. *See* 8 C.F.R. § 214.14(c)(2)(i). Even if the petitioner had filed all of his initial evidence timely, he is still ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

Claimed Criminal Activity

In his statement, the petitioner recounted that on May 15, 2012, he was stabbed in the head and punched in the stomach by the father of his friends' children. The perpetrator also took the petitioner's backpack and wallet. After discovering that his friend failed to file a police report, on July 26, 2012, the petitioner filed a police report regarding the attack.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] California Police Department (certifying official), on September 17, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official refers to California Penal Code (CPC) § 245(A)(1), assault with a deadly weapon, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that “the suspect cut the [petitioner] with a knife.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner had lacerations to his left hand and right side of his head.

Assault with a Deadly Weapon under California Law is a Qualifying Crime

The certifying official indicated that the petitioner was a victim of felonious assault and he listed the statutory citation for assault with a deadly weapon as the crime that was investigated. Under California

² The petitioner initially submitted his appeal on February 25, 2013.

law, assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:

(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245 (West 2013).

The record shows that the petitioner was cut in the head and hand with a knife while being attacked by the perpetrator. The regulation at 8 C.F.R. § 214.14(a)(14) defines victim of qualifying criminal activity as an alien who is directly and proximately harmed by qualifying criminal activity. Here, the Form I-918 Supplement B and supporting evidence establish that the petitioner was the victim of felonious assault, a qualifying crime under section 101(a)(15)(U)(iii) of the Act, and the relevant evidence shows that he was directly and proximately harmed by the qualifying crime.

Substantial Physical or Mental Abuse

Although the petitioner has established that he is a victim of a qualifying crime; he has not shown that he suffered substantial physical or mental abuse as a result of his victimization, as required by section 101(a)(15)(U)(i)(I) of the Act. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

In his statement, the petitioner claims that he suffered pain on his head, ribs, and hands after he was assaulted. In her statement dated March 17, 2013, the petitioner's friend, Ms. [REDACTED] reports that according to the petitioner, his head and ribs still hurt. Medical documents in the record show that on May 31, 2012, the petitioner suffered pain in his ribcage related to the assault but his head and hand injuries had healed. The petitioner reports that he is suffering from depression, and he has nightmares regarding the assault. Ms. [REDACTED] reports that the petitioner is sad when she visits him in detention and that he is not the same "happy" person. A mental health document in the record shows that the petitioner is suffering from post-traumatic stress disorder (PTSD).

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the assault. Although a mental health document in the record indicates that the petitioner is suffering from PTSD, it does not relate his PTSD to the assault. In addition, the mental health document indicates that the petitioner is also dealing with amphetamine dependence. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the

standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity and Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

Although the petitioner has established that he is a victim of a qualifying crime, he has not shown that he possesses information about the qualifying crime or that he is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsections 101(a)(15)(U)(i)(II)-(III) of the Act. The petitioner must establish his eligibility and submit all required initial evidence at the time of filing his Form I-918 U petition. *See* 8 C.F.R. § 103.2. Since the petitioner's Form I-918 Supplement B was not submitted as initial evidence with his Form I-918 U petition, he cannot demonstrate that he was eligible for U nonimmigrant status at the time of filing. *See id.*; 8 C.F.R. § 214.14(c)(2)(i). Furthermore, the Form I-918 Supplement B, submitted on appeal and dated September 17, 2012, was not signed by the certifying official within the six months preceding the June 19, 2012 filing date of the Form I-918 U petition, as required by the regulation at 8 C.F.R. § 214.14(c)(2)(i).

Conclusion

The petitioner has established that he was the victim of the qualifying criminal activity of felonious assault. However, the petitioner has not demonstrated that as a result of his victimization, he suffered substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). In addition, he has not established that he possesses information concerning the felonious assault or that he has been helpful to law enforcement authorities. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act and his petition must remain denied. However, the denial of the petitioner's instant Form I-918 U petition is without prejudice to the filing of a new Form I-918 U petition with a new Form I-918 Supplement B that meets the requirements of section 214(p)(1) of the Act and the regulation at 8 C.F.R. § 214.14(c)(2)(i).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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