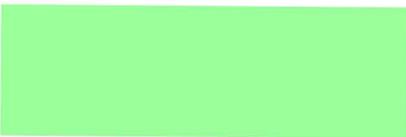


(b)(6)

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: **NOV 27 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:

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,

for 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.

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 she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity or that she was helpful in the investigation or prosecution of the criminal activity. On appeal, the petitioner submits a statement, additional evidence, and copies of documents already included in the record.

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;

* * *

(V) (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: . . . domestic violence; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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. 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[.]

8 C.F.R. § 214.14(b)(1).

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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 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).

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 petitioner is a native and citizen of Germany who entered the United States on July 15, 1996 on a B-2 nonimmigrant visa. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 3, 2012. On November 9, 2012, the director issued a Request for Evidence (RFE) that the petitioner submit additional evidence that she suffered substantial physical and mental abuse and that she was helpful in the investigation or prosecution of the cited criminal activity. The petitioner responded to the RFE with statements and additional evidence, which the director found insufficient to establish the

petitioner's eligibility. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts that she was helpful to the children's court and the Department of Children and Family Services (DCFS) regarding the domestic violence incident that occurred in 2002. She claims that she did not timely report the domestic violence incident because she was afraid of her abuser, being deported from the United States, and not being able to care for her children.

Claimed Criminal Activity

In her declaration, the petitioner stated that on or about July 20, 2002, the father of her two youngest children slapped her which caused her nose to bleed. She explained that she did not immediately report the incident because she had nowhere else to stay, she was afraid of being abused again and of being deported from the United States. She claimed that when she reported the incident, she "obtained different housing."

The record contains a U Visa Certification Form and a Form I-918 Supplement B. The U Visa Certification Form was signed by Superior Court Commissioner Stanley Genser, Los Angeles, California Superior Court on July 16, 2004. Commissioner Genser referred to California Penal Code (C.P.C.) § 273.5, willful infliction of corporal injury, as the criminal activity at issue and indicated that it occurred in July 2002. He affirmed that the petitioner was helpful and possessed relevant information regarding the criminal activity.

The Form I-918 Supplement B was signed by Detective Nina Serna, Los Angeles, California Police Department (certifying official), on December 27, 2011. 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 C.P.C. § 243(e)(1), domestic battery, 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, she indicated that the suspect hit the petitioner on her face "with an open hand." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official noted that there was no documentation of the injury because the "crime was reported two years after the incident."

Analysis

Substantial Physical or Mental Abuse

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).

According to the Form I-918 Supplement B, there is no documentation of any injury to the petitioner. The petitioner claims that on or about July 20, 2002, the father of her two youngest children slapped her and

caused her nose to bleed. In his statement dated November 17, 2012, Mr. [REDACTED] the father of the petitioner's oldest son, reports that their son was "scared and frightened" seeing the petitioner bleeding from her nose after being slapped by the suspect.

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the domestic battery incident. The Form I-918 Supplement B does not indicate that there was any injury. Though the petitioner describes her nose bleeding from being slapped by the suspect, she does not probatively discuss any permanent or serious harm the incident caused to her appearance, health, or physical or mental soundness. While we do not minimize what the petitioner experienced as a result of being a victim of domestic battery, the overall evidence does not establish that she has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, an alien must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term "investigation or prosecution" is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On the U Visa Certification Form, Commissioner Genser attested to the petitioner's helpfulness; however, on the Form I-918 Supplement B, the certifying official indicated that the petitioner was not being or likely to be helpful in the investigation and/or prosecution of the qualifying domestic battery criminal activity. The certifying official reported that the petitioner "reported the crime two years after [the] incident occurred. No investigation was conducted due to statute of limitations [sic]." The record shows that on March 8, 2004, the petitioner reported to the police that sometime between July 1, 2002 and July 31, 2002, the father of her two youngest children slapped her on her face. She claimed that she did not report the incident to the police when it occurred because "it was a minor problem." She explained that she decided to report the incident because "she need[s] her visa extended so she can remain in this country, obtain a work permit and to obtain custody of her daughters." The police record shows that the petitioner was informed that the statute of limitations had expired on the incident. The petitioner claims that she was helpful to the Los Angeles, California Superior Court, the children's court, and DCFS, but she did not timely report the domestic battery incident to the Los Angeles Police Department because she was afraid of her abuser, being deported from the United States, and not being able to care for her children.

The AAO acknowledges the difficulties that victims may face in reporting domestic violence. However, when the petitioner reported the incident to the Los Angeles Police Department in March 2004, the statute of limitations had expired. The certifying official indicated that the petitioner was not helpful in the investigation or prosecution of the criminal activity that occurred in July 2002. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and she has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

The petitioner has failed to establish that she suffered resultant substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and she has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act.

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.

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