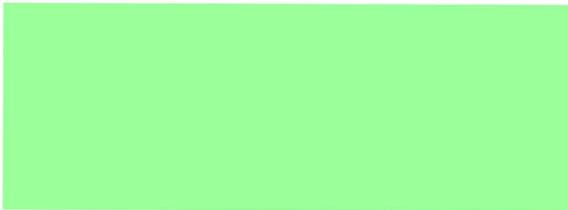


(b)(6)

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

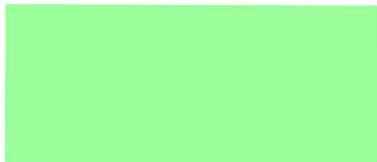


Date: **NOV 27 2013** Office: VERMONT SERVICE CENTER FILE:

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:



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. On appeal, counsel submits a brief, 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;

(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: . . . witness tampering; . . . 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).

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 Mexico who claims to have entered the United States in December 2002 without inspection. 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 September 21, 2011. On April 4, 2012, the director issued a Request for Evidence (RFE) that the petitioner submit additional evidence that she was the victim of qualifying criminal activity, that she suffered substantial physical and mental abuse, that she possessed information concerning the qualifying criminal activity, and that she was helpful in the investigation or prosecution of qualifying criminal activity. Counsel responded to the RFE with statements and additional evidence. The director found the petitioner satisfied all of the eligibility requirements for U nonimmigrant status except for establishing that she had suffered substantial physical or mental abuse as a result of her victimization. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that even though the petitioner is a victim of a non-violent crime, she is eligible for U nonimmigrant classification because the duration of the infliction of the harm and the multiple acts taken together constituted substantial abuse, and 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 June 12, 2012 affidavit, the petitioner recounts that she suffered exploitative work conditions under her former employer, she was pressured to lie to New York Department of Labor (DOL) officials regarding her work hours and length of employment and to falsify documents, and she was threatened with the loss of her job if she did not comply. In her September 9, 2011 affidavit, the petitioner states that her former employer was very controlling and installed video cameras to monitor her and the other workers. She recalls that if the employees broke any rules, they would be fined and deductions would be taken out of their pay. She explains that since they were "paid off the books," there was no record of the fines and deductions, and she had to lie to the DOL regarding the fines. The petitioner claims that she was afraid of losing her job because she supports her three children and mother in Mexico. She notes that with her limited education and English speaking ability, and illegal immigration status, it would be difficult to find another job. She states that because of the threats made by her former employer, she was nervous, stressed, anxious, and developed gastritis. She claims that it was difficult to lie to DOL because she knew it was "wrong to lie to government officials." In his June 21, 2012 affidavit, the petitioner's husband recounts that the petitioner was depressed as a result of the mistreatment by her former employer. He explains that all she did during this time was "sleep and go to work," and she "never wanted to do anything." The petitioner reports that she was afraid of being deported to Mexico because she suffered sexual and physical abuse by family members who still reside there.

In her letter dated June 19, 2012, Ms. [REDACTED] a forensic social worker, notes that the petitioner has experienced symptoms of depression as a result of being a victim of witness tampering. She also reports that the petitioner was sexually abused in Mexico, "lived in extreme poverty, and often went hungry." Ms. [REDACTED] indicates that the petitioner was emotionally abused by her former employer, and she should receive a psychiatric evaluation to get an accurate 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. Counsel states the petitioner suffered "substantial mental pain, as well as aggravation of her pre-existing condition of trauma." Counsel claims that the petitioner's former employer made the petitioner feel shameful and reminded her of when she was sexually abused in Mexico. However, the petitioner does not discuss having these feelings in her affidavits, nor does any of the other evidence support counsel's claims, and the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner credibly described her fear and anxiety over being told to lie to the DOL and the record shows that the harm suffered by the petitioner occurred as a result of various acts committed by her former employer and over time. However, the petitioner and Ms. [REDACTED] fail to probatively discuss the effects of the victimization on the petitioner's physical and mental health. While Ms. [REDACTED] generally describes the petitioner as having symptoms of depression, neither the petitioner nor Ms. [REDACTED] discuss, for example, any permanent or serious harm the witness tampering caused to the petitioner's appearance, health, or

physical or mental soundness. While we do not minimize what the petitioner experienced as a result of being a victim of witness tampering, the overall evidence does not establish that she has suffered resultant substantial physical or mental abuse.

On appeal, counsel 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.

On appeal, counsel also claims that the petitioner's U visa petition should only be denied if 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). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

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). 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.