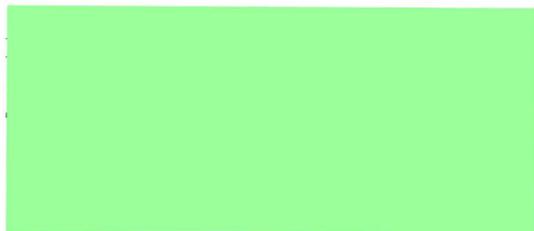


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

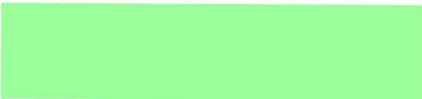


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: APR 10 2014 Office: VERMONT SERVICE CENTER



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal, a decision it affirmed on motion. The matter is again before the AAO on a second motion to reopen. The motion will be granted. The decision dismissing the appeal shall be affirmed and the underlying petition will remain denied.

Pertinent Facts and Procedural History

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. On November 5, 2012, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), on the basis that the petitioner had failed to establish that she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The AAO affirmed the director's decision, noting that the petitioner did not establish that she suffered substantial physical or mental abuse as the result of her victimization. The petitioner, through counsel, filed a motion to reopen the AAO's decision and submitted a psychological evaluation. The AAO granted the motion but ultimately affirmed its prior determination that the petitioner did not demonstrate that as a result of her victimization, she suffered substantial mental abuse.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). In this second motion to reopen, counsel reiterates his assertions in the first motion regarding the petitioner's psychological disorder stemming from being a victim of witness tampering. In support of his claim, counsel submits a brief and updated letter from [REDACTED], a licensed clinical psychologist. As the petitioner, through counsel, has submitted new facts supported by documentary evidence, the motion to reopen will be granted.

Analysis

As the applicable law, facts and procedural history were adequately documented in our dismissals of the appeal and the petitioner's first motion to reopen, they shall not be repeated here. Rather, this decision will focus on the assertions in counsel's brief and the updated letter from [REDACTED] that were filed in conjunction with this motion to reopen.

Counsel claims that the petitioner has suffered substantial mental abuse as a result of her victimization. He notes that the "witness tampering worsened [the petitioner's] psychological state" by increasing "her sense of helplessness, lack of control over her own life, feeling guilty, ashamed, fearful, angry, and even more depressed." He asserts that the psychological evaluation submitted with the first motion to reopen addressed the witness tampering from the petitioner's point of view and it directly attributed the petitioner's mental health disorder to the witness tampering.

In her updated letter, [REDACTED] indicates that the petitioner suffered from exploitive and abusive working conditions at her previous place of employment, which is directly attributed to the petitioner's depression and anxiety. [REDACTED] reports that the petitioner was "functioning well" when she began working for her previous employer, but over time she became "depressed, fearful and with her self-esteem crushed." She explains that when the petitioner's previous employer demanded that the petitioner "lie to protect him and

used threats to make her comply, he was successful because [the petitioner] was a vulnerable victim due to her depression and high levels of anxiety from the previous abuse he had perpetrated against her.” [REDACTED] notes that although witness tampering was the only crime prosecuted against the petitioner’s former employer, he also committed other crimes like sexual harassment, sexual exploitation, extortion, and dangerous working conditions. [REDACTED] states that even though the petitioner “is doing somewhat better now” and has made “progress in overcoming her trauma and mental health symptoms,” she suffers an “open emotional injury” and the fact that she is doing better should not be held against her. She claims that as a result of her victimization, the petitioner’s psychological functioning has been harmed and she now does not trust her instincts, her faith in others has been harmed, and she is suspicious of others.

Section 101(a)(15)(U)(i)(I) of the Act requires a petitioner to establish substantial physical or mental abuse as a result of being a victim of a statutorily enumerated crime or substantially similar criminal activity. The regulation at 8 C.F.R. § 214.14(a)(8) defines physical or mental abuse as “injury or harm to the victim’s physical person, or harm or impairment of the emotional or psychological soundness of the victim.” When assessing whether the abuse suffered is “substantial,” U.S. Citizenship and Immigration Services (USCIS) considers, among other factors: the nature and severity of the harm inflicted or suffered; the severity of the perpetrator’s conduct; the duration of the inflicted harm; and the extent to which there is any permanent or serious harm to the appearance, health, or physical or mental soundness of the petitioner, including the aggravation of any pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

The preponderance of the evidence submitted below and on motion fails to establish that the petitioner has suffered substantial mental abuse as a result of her being a victim of witness tampering [REDACTED] diagnoses the petitioner with dysthymic disorder, stating that the petitioner’s mental health conditions are related not only to the certified crime, but also to other activities that occurred at the petitioner’s former place of employment, such as sexual harassment, sexual exploitation, extortion, and dangerous working conditions. The harm that USCIS assesses under the standards and factors at 8 C.F.R. § 214.14(b)(1) derives from the certified criminal activity. Section 101(a)(15)(U)(i)(I) of the Act (“the alien has suffered substantial . . . abuse as a result of having been a victim of criminal activity described in clause (iii)”). [REDACTED] evaluation, which discusses many events in the petitioner’s life, does not sufficiently demonstrate that the petitioner’s dysthymic disorder is directly related to the witness tampering.

On motion, [REDACTED] states that the perpetrator’s actions relating to the witness tampering aggravated the petitioner’s pre-existing conditions of depression and heightened anxiety, and while the petitioner is doing better now than she had been in the past, “any resiliency she may be demonstrating should certainly not be held against her.” As discussed above and in our prior decisions, we noted that a petitioner must establish that her victimization resulted in abuse that was “substantial.” We don’t discount [REDACTED] expertise; however, her evaluation and the other evidence in the record fails to demonstrate any permanent or serious harm to the petitioner’s overall health, appearance or mental soundness as a result of the criminal activity perpetrated against her. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner's motion does not establish any error in our prior decisions. As stated in the decision to dismiss the petitioner's appeal, the petitioner has not established that she suffered substantial physical or mental abuse as the result of her victimization. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act and her petition must remain denied.

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 motion is granted. The appeal remains dismissed and the petition remains denied.