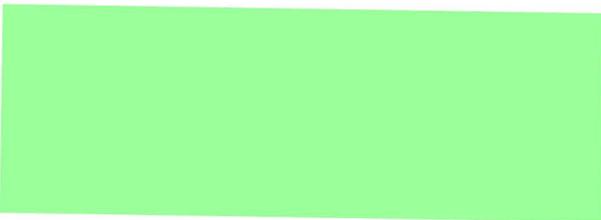


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 16 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 the subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The appeal will remain dismissed and the underlying petition will remain denied.

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 8, 2012, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). In his decision on the Form I-918 U petition, the director stated that the petitioner did not establish she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The petitioner, through counsel, timely filed an appeal with the AAO. The appeal was dismissed as the petitioner did not establish that she suffered substantial physical or mental abuse as the result of her victimization. In addition, the AAO noted that the petitioner is inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, was denied. The petitioner, through counsel, timely filed the instant motion with the AAO.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). On motion, the petitioner, through counsel, asserts that the petitioner suffered substantial mental abuse as a result of her victimization as shown by her recent diagnosis of mental health conditions. In support of her claim, counsel submits a psychological evaluation for the petitioner that was previously unobtainable. As the petitioner, through counsel, has submitted documentary evidence to support her new claim, the motion to reopen will be granted.

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 last entered the United States in 2003 without admission, inspection or parole. With her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on which a New York State Department of Labor (DOL) official certified that the petitioner was the victim of witness tampering under New York Penal Law, a qualifying crime. The certifying official attested to the petitioner’s possession of information regarding the crime and her helpfulness in the law enforcement

agency's investigation of the offense. The director denied the petition for failure to establish that the petitioner suffered substantial physical or mental abuse as a result of her victimization and the AAO dismissed the petitioner's subsequent appeal on May 24, 2013.

Substantial Physical or Mental Abuse

In her August 26, 2011 affidavit, the petitioner recounted that when she worked for her former employer in 2005, she had no problems and was paid regularly. But after five months, she became pregnant and decided to leave. In or around March 2009, she returned to working for her former employer, and was expected to work 11 to 12 hours a day with no break. When the DOL officials came to the restaurant, she was told to lie to them regarding her work hours and wages, and she was threatened to be fired if she did not comply. She was "a little nervous" about being told to lie to the DOL officials. In her affidavit dated July 23, 2012, the petitioner claims she lied to the DOL officials because she did not want to lose her income which helped support her young daughter. She explains that her former employer required that she wear provocative clothing, which made her feel "shameful, violated, and powerless." She claims that because of the mistreatment by her former employer, she began to relive the trauma she suffered as a child when she was physically and emotionally abused by her father. She states she suffered "nervousness, anxiety, and distress" as a result of lying to the DOL officials, and continues to suffer from "fear and panic."

In his affidavit dated June 15, 2013 and submitted on motion, [REDACTED] a licensed clinical psychologist, diagnoses the petitioner with post-traumatic stress disorder (PTSD) and major depressive episode. [REDACTED] indicates that the petitioner's "symptoms and disturbed mental state [are] correlated with the type of psychological injury produced by persistent stressful situations such as being coerced to lie to people in authority (e.g., New York Department of Labor)." He reports that according to the petitioner, her father was a violent man and she witnessed him physically abusing her mother on one occasion. [REDACTED] also noted that the petitioner was sexually abused when she was crossing into the United States from Mexico, which was a "very traumatic experience" for her and she cannot forget it. Through this incident, she experienced depression, difficulty sleeping, and nightmares. [REDACTED] reports that the petitioner's disorders are "significantly related – and have been exacerbated – to her life experiences and while working" for her former employer, and he recommends that she receive therapy. In addition, he indicates that the petitioner's symptoms "may be exacerbated by her current legal and financial situation."

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. Although [REDACTED] diagnoses the petitioner with post-traumatic stress disorder and major depressive episode, he does not directly attribute these conditions to the certified criminal activity, witness tampering. He indicates that the petitioner's mental health problems are also related to other events, such as her exposure to domestic violence, sexual assault, intimidation and threats, and her current legal and financial situation. Section 101(a)(15)(U)(i)(I) of the Act provides that the abuse must stem from the qualifying criminal activity, and Dr. Rife's evaluation does not sufficiently demonstrate that required causal condition.

As discussed above and in our prior decision, we noted that a petitioner must establish that her victimization resulted in abuse that was "substantial." When viewed in its totality, the evidence in the record, including

evaluation, 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 has not demonstrated that as a result of her victimization, she suffered substantial 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 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.