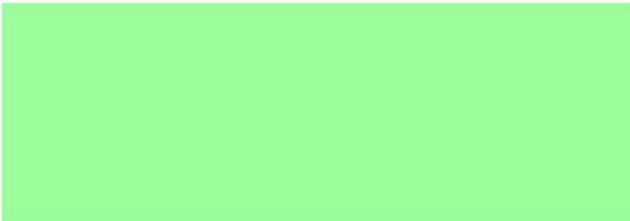


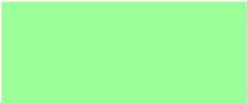
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

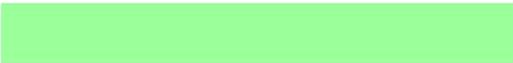


U.S. Citizenship
and Immigration
Services

(b)(6)

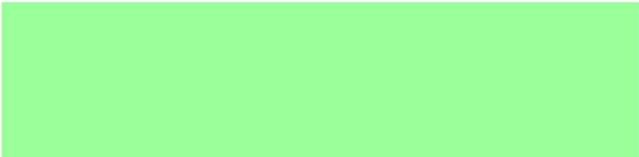


Date: **AUG 12 2014** Office: VERMONT SERVICE CENTER FILE: 

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.

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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.

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;

Domestic violence and felonious assault are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) Illegal Entrants and Immigration Violators

(A) Aliens Present Without Permission or Parole

- (i) In General.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

* * *

(7) Documentation requirements.-

* * *

(A) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

* * *

is inadmissible.

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, a native and citizen of Mexico who was born on May 14, 1997, admits to entering the United States without inspection, admission or parole on March 31, 2000, when he was two years of age. The petitioner filed the instant Form I-918 U petition on April 20, 2012 with an accompanying Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On March 11, 2013, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States. The petitioner responded with additional evidence.¹ On December 19, 2013, the director found the petitioner's response insufficient to overcome his grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(7)(B)(i)(II) (nonimmigrant without a valid passport) of the Act. The director denied the petitioner's Form I-918 U petition on the same day, stating that the petitioner was ineligible for U nonimmigrant status

¹ On June 25, 2013, the petitioner submitted another Form I-192, receipt number [REDACTED], which the director denied on December 19, 2013. On February 7, 2014, the petitioner, through counsel, filed a motion to reopen and reconsider the director's decision, which has not been adjudicated by the Vermont Service Center.

because he was inadmissible to the United and his Form I-192 was denied. In addition, the director noted that the petitioner did not establish that he met any of the requirements for U nonimmigrant classification. The petitioner, through counsel, appealed the denial of the Form I-918 U petition.

On appeal, counsel does not dispute that the petitioner is inadmissible to the United States but claims that the director failed to recognize the best interests of the child when adjudicating the petitioner's Form I-918 U petition. In addition, she claims that the petitioner's presence in the United States without admission was "out of his control" because his mother brought him to the United States when he was two years of age. On appeal, counsel submits a brief, additional evidence, and copies of documents already included in the record.

Claimed Criminal Activity

In his declaration, the petitioner recounted that when he was in fifth grade, his stepfather became angry at him for getting into trouble at school. His stepfather punched him in the face, kicked him in the stomach, threw him on the floor and against the wall, and "banged [his] head against the floor." When his grandmother saw him bleeding, she called the police. When the police arrived, they took statements and photographs of the petitioner's injuries.

The Form I-918 Supplement B that the petitioner submitted was signed by Officer [REDACTED] Arizona, Police Department (certifying official), on October 25, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence, felonious assault and unlawful criminal restraint, and indicated that the criminal activities occurred on three separate occasions. In Part 3.3, the certifying official refers to Arizona Revised Statutes (A.R.S.) § 13-1204, aggravated assault/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, he indicated that the petitioner "was the victim of domestic violence and aggravated felonious assault," he "contacted the police and assisted with prosecutions of the perpetrator," and he "stated that he would testify against this perpetrator." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that according to the police report, the petitioner had "red marks on the left side of his forehead above his left eye" and the "red mark near his eye showed slight swelling and looked to be bruising." In addition, the certifying official noted that the perpetrator slapped the petitioner in the mouth, hit him with a belt, punched him in the face with his fists, kicked him the stomach, and pushed him against the wall and floor.

Analysis

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the director's decision of December 19, 2013 will be withdrawn.

The Petitioner is the Victim of Qualifying Criminal Activity

The certifying official at Part 3.1 on the Form I-918 Supplement B stated that the petitioner was the victim of domestic violence, felonious assault and unlawful criminal restraint. Part 3.3 indicates that the certifying

official investigated or prosecuted the crime of aggravated assault, and the police reports and criminal court documents establish that domestic violence was also investigated and prosecuted against the perpetrator. The record shows that when the petitioner was a minor, he was physically abused by his stepfather on multiple occasions. 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 petitioner was the victim of felonious assault, domestic violence and unlawful criminal restraint, and the relevant evidence shows that he was directly and proximately harmed by the qualifying crimes. Accordingly, he has established the requisite victimization.

Substantial Physical or Mental Abuse

At Part 3.6 of the Form I-918 Supplement B, the certifying official indicated that the perpetrator slapped the petitioner in the mouth, hit him with a belt, punched him in the face with his fists, kicked him the stomach, and pushed him against the wall and floor. In the incident report, a police officer indicated that the petitioner had “red marks on his back, stomach, and left side of his forehead all consistent with being struck,” and the “red mark near his eye showed slight swelling and looked to be bruising.” Police records, criminal court documents, and photographs in the record support the claim of physical injuries. On appeal, counsel states the petitioner “grew up both being yelled at, beaten, and excessively punished by [his stepfather] as well as witnessing [his stepfather’s] abuse of his mother.” Although they were being abused by the petitioner’s stepfather, the petitioner’s mother continued to reside with him and forced the petitioner to also reside with them. In his affidavit dated January 13, 2014, the petitioner states that his stepfather abused him throughout his childhood and he was neglected by most of his family members, including his mother who did nothing to stop the abuse. In his affidavit dated April 26, 2013, the petitioner claims that his stepfather would yell and beat him up “even if [he] didn’t do anything.” He states that he has “a hard time remembering the abuse [he] suffered because they were painful experiences.” In her statement dated January 5, 2012, the petitioner’s mother states that everything that the petitioner did bothered her boyfriend; “if he ate, or if he spoke out, or just in the room, [her boyfriend] would hit and scream at him.” The petitioner explains that the abuse affected him and he has difficulty controlling his anger; however, through working with doctors and counselors, he is learning to control his anger and has gotten better.

A preponderance of the relevant evidence demonstrates that the petitioner suffered substantial mental and physical abuse as the result of his victimization. The Form I-918 Supplement B, police reports, and statements from the petitioner, his family, and friends provide probative and credible details of the criminal activity perpetrated against the petitioner, as well as the nature and duration of the petitioner’s resulting injuries to his physical health and mental soundness. The totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The director’s contrary determination is withdrawn.

In addition, as the certifying official indicated on the Form I-918 Supplement B, the petitioner possesses information concerning the qualifying criminal activity, was helpful to law enforcement authorities, and the criminal activity occurred in the United States.

Admissibility

The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 on discretionary grounds. See *Decision of the Director*, dated December 19, 2013. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192.

Conclusion

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).

ORDER: The director's decision is withdraw. The matter is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.