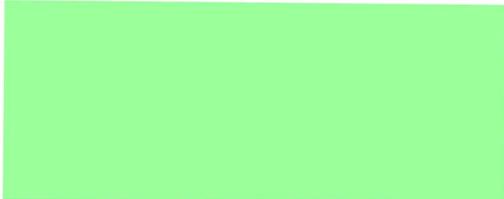




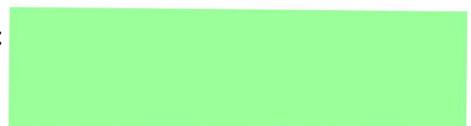
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: Office: VERMONT SERVICE CENTER

FILE:



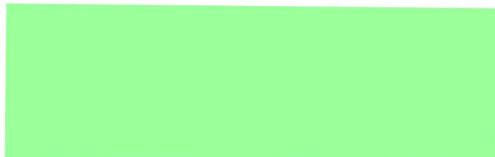
DEC 04 2014

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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

The director denied the petition because although the petitioner established that she was the victim of the qualifying crime of domestic violence, she failed to establish that she suffered substantial physical or mental abuse as a result of her victimization. On appeal, counsel submits a brief and additional evidence.

*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 is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I) of the Act, 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[.]

\* \* \*

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 [U.S. Citizenship and Immigration Services (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 initially entered the United States in December 1996 without inspection, admission or parole. On January 3, 2004, the petitioner was expeditiously removed from the United States. On an unknown date, the petitioner reentered the United States without inspection, admission or parole and sometime thereafter she met the man who perpetrated the domestic violence against her which forms the basis of her Form I-918 U petition. In her declarations, the petitioner recounted that gave birth to the daughter of her abuser in

October 2005 and shortly afterwards moved in with him.<sup>1</sup> Even though they did not have enough money for their bills, her daughter's father did not allow the petitioner to work and they argued about their finances. Her daughter's father would insult her, come home drunk late at night and demand that she get up and make him dinner, and he did not take her out because he was embarrassed to be seen with her. In 2006, he choked her in front of her son's godparents over a comment she made but her son's godfather was able to get him off of her.

The petitioner was depressed because their daughter suffered from a heart condition and needed an operation, and her daughter's father was not supportive during this time. When their daughter had the operation in January 2007, her daughter's father came to the hospital the day of the surgery but left before the procedure was completed and only visited briefly during the four days their daughter was in the hospital.

Two months after their daughter's surgery, her daughter's father confessed that he had cheated on her. She worried that she may have contracted a disease due to his infidelity and they began arguing. When she got up from the table, he grabbed her by the arms and threw her against the wall. She fell unconscious and woke up in bed with her son nearby asking her daughter's father what he had done to his mother. She was worried that her son had witnessed the incident and told her daughter's father to leave the house or she would call the police. He would not leave and he threatened to hurt her if she called the police. The next day she convinced her daughter's father to leave but he returned two days later, threatening her again that if she called the police, she would "pay." Even though she was afraid of her daughter's father, in March 2007, she filed a police report against him. She did not ask the police to arrest him because she was afraid of what he would do to her after he was released from jail; "[her] fear was stronger than [she] was."

The petitioner and her daughter's father reconciled after he convinced her that he would change. In the beginning of their reconciled relationship, they were better and he allowed her to get a job. After a few months, her daughter's father became jealous when she went to work and they started arguing again. In September 2008, she asked him to help her move some furniture but he had a "bad attitude" while helping and bruised her toe which became infected and had to be amputated. Instead of supporting her through her recovery, her daughter's father teased and insulted her and she became very depressed. In October 2009, her daughter's father assaulted her after she did not pick him up from work because she was sick. After assaulting her, he left the apartment. She had to move out of the apartment alone with her two children. About a month later, her daughter's father wanted to get back together and she told him no. He started leaving threatening messages on her phone, telling her that "he would kill [her] and cut [her] into little pieces into a bag, he would tie some weights to it and throw it into the lake and no one would ever find [her]."

One day she decided to return some items to her daughter's father that he had left at her apartment and ask him for child support. She went to his house with her friend's husband, and when she asked him for child support, he said no. She said she "would demand child support," and as she was leaving, her daughter's father grabbed her arm, pushed her against her friend's truck, and lifted her off the ground by

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<sup>1</sup> The petitioner also had a son from a previous relationship.

her neck. At this point, her friend's husband came out of the truck and told him to let her go. Her daughter's father eventually let her go and she went to the police station to file a report. When she got to the police station, her daughter's father was already there filing a report against her. The police could not do anything since she had no visible injuries and her daughter's father had a different story. When the police did not help her, she obtained an order of protection. After she obtained the order of protection, her daughter's father stopped harassing her and she has not seen him since.

The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 24, 2012. The Form I-918 Supplement B was signed by Judge [REDACTED] Associate Circuit Court Judge, Circuit Court of [REDACTED] County, Illinois (certifying official), on January [REDACTED]. The certifying official listed the criminal activity of which the petitioner was a victim and which was investigated or prosecuted as domestic violence. When asked to describe the criminal activity, the certifying official wrote that the petitioner "has been physically and mentally abused by [her daughter's father] . . . throughout their relationship." The certifying official did not indicate any known or documented injuries to the petitioner.

On September 16, 2013, the director issued a Request for Evidence (RFE) regarding, in pertinent part, that the petitioner suffered resultant substantial physical and mental abuse. The petitioner responded to the RFE with additional evidence. The director ultimately found the petitioner a victim of domestic violence but determined that she had not suffered resultant substantial physical or mental abuse. The director denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner through counsel contends that USCIS erroneously determined that the petitioner did not suffer substantial abuse when the evidence shows that she was physically abused by her partner, and that the director held her "to an unreasonably high burden of proof."

### *Analysis*

We conduct appellate review on a *de novo* basis. Based upon the evidence, we withdraw the director's determination that the petitioner did not suffer substantial physical or mental abuse and find that she has satisfied section 101(a)(15)(U)(i)(I) of the Act.

The petitioner submitted several statements describing the years of abuse perpetrated by her daughter's father against her, as well as the facts of her victimization during the incidents in March 2007 and January 2010 and their impact on her mental and physical health. In his declaration dated February 28, 2014, the petitioner's son recounts that when he was eight years old, he witnessed the petitioner unconscious on the floor after his sister's father had pushed and hit the petitioner. In her declaration dated July 19, 2012, the petitioner claimed that when her daughter's father was helping her move furniture, he was careless and her foot was injured. Her toe eventually became infected and she had to have it amputated. Instead of her daughter's father helping in her recovery from her toe surgery, he called her names and insulted her. According to the petitioner's statements, the stress from the abuse exacerbated her diabetes, which caused her blood sugar to rise and give her headaches.

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A medical document in the record indicates that the petitioner has been diagnosed with diabetes and had her toe amputated.

In her letter dated June 12, 2012, Ms. [REDACTED] a counselor at [REDACTED] indicates that the petitioner first came to their program in 2007 after being a victim of domestic violence from her daughter's father. Ms. [REDACTED] accepted the petitioner into the program after determining that she was a victim of domestic violence, but recommended that the petitioner seek domestic violence services closer to her home. She stated that she and the petitioner maintained phone contact. In her affidavit dated February 28, 2014, the petitioner states that in 2007, she attended counseling sessions for approximately four to five weeks at the [REDACTED]. The petitioner's son recalls that after the incident when the petitioner was knocked unconscious, the petitioner attended at least five counseling sessions at [REDACTED].

The petitioner provided probative statements not only about the victimization that resulted in the court issuing a protective order against her daughter's father in 2010 but also the other incidents of physical violence and emotional abuse perpetrated by her abuser prior to 2010. Although he certifying official did not describe any known or documented injuries to the petitioner on the Form I-918 Supplement B, he noted that the petitioner "has been physically and mentally abused by [her daughter's father] . . . throughout their relationship." The petitioner described her depression and feelings of diminished self-worth as a result of abusive episodes between her and her daughter's father, which included being choked, rendered unconscious, verbally harassed and threatened with death. The severity of the petitioner's abuser's conduct as described in the record amounts to substantial physical and mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1). The preponderance of the evidence demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of domestic violence, as required by section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

#### *Admissibility*

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires 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. 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 in order to waive a ground of inadmissibility. 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).

In this case, the director determined that the petitioner was inadmissible under the following subsections of section 212(a) of the Act: (6)(A)(present without admission or parole); (6)(C)(i) (fraud or misrepresentation); (7)(B)(i) (nonimmigrant without valid documentation); and (9)(C)(i)(II) (unlawful presence after previous immigration violation). The director denied the Form I-918 waiver application, without analysis, solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated January 27, 2014. Because the petitioner has overcome the basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

*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). Here that burden has been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

**ORDER:** The director's January 27, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application 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.