



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER FILE: [REDACTED]
DEC 12 2014

IN RE: Petitioner: [REDACTED]

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:

[REDACTED]

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 The director's decision will be withdrawn and the matter returned for entry of a new decision.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 petitioner for the petitioner's failure to establish that she suffered substantial physical or mental abuse as a result of the qualifying domestic violence offense committed against her by her ex-husband.

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), 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 Honduras who claims to have initially entered the United States in April 2004 without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on November 14, 2012. On October 10, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of her victimization. In addition, the director requested the police report for the qualifying criminal activity. Counsel responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. 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, appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts, in part, that as a victim of domestic violence, she suffered severe and debilitating injuries arising from her victimization, some of which required emergency room visits.

We conduct appellate review on a *de novo* basis. *De novo* review of the record and consideration of counsel's claims on appeal establish the petitioner's eligibility. The director's decision will be withdrawn and the matter will be remanded for the reasons discussed below.

Claimed Criminal Activity

In her declarations, the petitioner recounted that she began dating her ex-husband in 2004 and during the four years that they were together, he physically and mentally abused her. On December 23, 2008, after they had separated, the petitioner went to her ex-husband's home to pick up some of her belongings. While she was there, her ex-husband insulted her and hit her in her face after she asked him about Christmas gifts and child support for their daughter. When she tried to call the police, her ex-husband took the phone away from her and left the house. She went to the neighbor's house to call the police. When the police came, they took the petitioner to the police station where she gave a statement and obtained a temporary restraining order.

The Form I-918 Supplement B that the petitioner submitted was signed by Chief [REDACTED] New Jersey, Bureau of Police (certifying official), on June 22, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to New Jersey Revised Statutes § 2C:12-1a(1), simple assault, 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 according to the petitioner, on December 23, 2008, the petitioner's ex-husband "slapped her twice in the face." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner had "[n]o signs of injuries and refused medical treatment."

Analysis

Substantial Physical or Mental Abuse

The petitioner submitted several statements describing the years of abuse suffered by her at the hands of her ex-husband, the impact of his abuse on her mental and physical health, and the facts of her victimization during the incident in December 2008. In her declaration dated September 25, 2012, the petitioner claimed that during her marriage to her ex-husband, her ex-husband called her insulting and demeaning names, he monitored her phone calls, and he physically abused her. In her statement dated March 5, 2014, the petitioner states that she went to the emergency room a few days after the December 2008 incident because she was having chest pains. She was told that she was "anxious and nervous," and was referred to a psychologist. She did not follow-up with the psychologist because she was "alone," she had no one to help watch her daughter, she did not

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understand how therapy could help her, and she did not have health insurance and worried about the cost. She explains that she went back to the emergency room in July 2011 and 2013 for chest pains, and was again referred to a psychologist. She was given a list of therapists but did not follow-up because she was “alone” and worried about the cost.

The record contains evidence of the petitioner’s hospital visits. She claims that after the 2013 emergency room visit, she saw a medical doctor who prescribed her medications for anxiety, depression, and insomnia. In a statement dated March 6, 2014, Dr. [REDACTED] indicates that in May 2013, he diagnosed the petitioner with generalized anxiety disorder and prescribed her medications. The petitioner states that she still feels symptoms of depression, but she receives counseling services through a domestic violence support group that she attends every week. In a letter dated September 14, 2012, Ms. [REDACTED] an outreach advocate with the [REDACTED], claims that when the petitioner first started attending the support group for victims of domestic violence, she exhibited symptoms of domestic violence survivors. She reports that the petitioner has benefited from this program and “continues to work on personal issues related to the effects of domestic violence.”

In a psychological evaluation dated October 3, 2012, Ms. [REDACTED] a licensed clinical social worker, stated that the petitioner recounted that she grew up in an abusive household, witnessing her mother being physically abused by her father multiple times a week. Ms. [REDACTED] also states that the petitioner’s ex-husband subjected the petitioner to psychological, physical, financial and sexual abuse during their marriage. Ms. [REDACTED] indicated that based on the petitioner’s symptoms, which include re-experiencing the domestic violence events, avoidance, and hypervigilance, the petitioner is suffering from Post-Traumatic Stress Disorder (PTSD).

A preponderance of the relevant evidence demonstrates the resultant substantial mental abuse from the certified criminal activity. The evidence in the record, including the incident report, medical and mental health documents, and statements from the petitioner provide probative and credible details of the certified crime as well as other related domestic violence activities perpetrated against her by her ex-husband, who was also the perpetrator of the certified criminal activity. The evidence documents a history of domestic violence perpetrated by the petitioner’s ex-husband against the petitioner, as well as the nature and duration of the petitioner’s resulting injuries to her physical and mental soundness. See 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of pre-existing conditions). 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.

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. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated February 14, 2014. 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). 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 February 14, 2014 decision is withdrawn. 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.