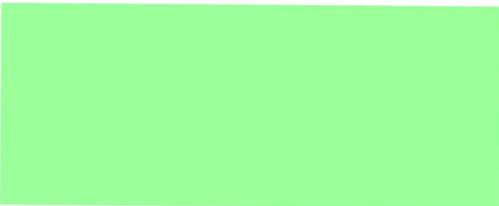


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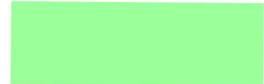
U.S. Citizenship
and Immigration
Services



Date: DEC 31 2014

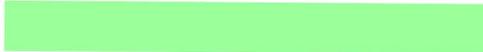
Office: VERMONT SERVICE CENTER

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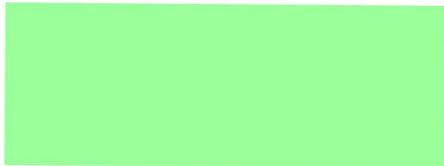
PETITIONER:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 the petitioner failed to establish that she was the victim of qualifying criminal activity as defined at 8 C.F.R. §214.14(a)(14), and therefore could not establish she suffered substantial physical or mental abuse as the result of qualifying criminal activity, that she possessed information regarding the qualifying activity, and that she had been helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. The director also noted that the petitioner is inadmissible to the United States. On appeal, counsel submits a brief and copies of previously submitted evidence.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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: . . . extortion; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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.

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . the [petitioner] has been a victim of qualifying

criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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."

The AAO conducts appellate review on a de novo basis. All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof). Upon review, we withdraw the director's decision to deny the petition on the stated grounds.

Facts and Procedural History

The petitioner is a native and citizen of Guatemala who claims to have last entered the United States in May, 2002, without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), on October 1, 2012. On September 27, 2013, the director issued a Request for Evidence (RFE) that, among other things, the petitioner is a victim of qualifying criminal activity as defined by regulation. 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, timely appealed the denial of the Form I-918 U petition. On appeal, counsel submits copies of previously submitted evidence and a brief asserting that the factual findings in the director's decision were erroneous, and that the petitioner is a victim of and suffered direct and proximate harm as a result of the commission of the qualifying criminal activity of extortion.

Claimed Criminal Activity

In her personal statement, the petitioner detailed the circumstances of the extortion committed against her. The petitioner recounted that in 2007 she met with an individual, [REDACTED] who told her that he worked for immigration and that he could procure citizenship for the petitioner. Mr. [REDACTED] wore a shirt that said "ICE" on it and carried a gun. The petitioner paid Mr. [REDACTED] \$12,000 over the next two years, but in 2009 when the petitioner went to Mr. [REDACTED] house to obtain information about the status of her case, he told her that everything had been a lie and that she would not gain legal immigration status. The petitioner indicated that Mr. [REDACTED] told her he had all of her personal information and her family's information and that he would kill her and her family if she talked to anyone. Mr. [REDACTED] told her he had killed people before and that he had friends in the police who would help him. The petitioner stated that she was scared, so she did not talk to anyone about what had happened until after Mr. [REDACTED] and his associates were arrested. The petitioner then talked to the police, and later prosecutors in the case against Mr. [REDACTED] contacted her. The petitioner and her sister both testified against Mr. [REDACTED]

In support of her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] of the [REDACTED] County, Maryland, State's Attorney's Office (certifying official). The certifying official listed the criminal acts that the petitioner was the victim of, at Part 3.1, as extortion and other: "theft over." At Part 3.3, the certifying official listed the statutory citations of the crimes investigated or prosecuted as Maryland Criminal Code (Md. Code Ann.) sections 3-701 (extortion generally) and 7-104 (general theft provisions). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that three individuals scammed the petitioner into paying them \$9,500 in order to obtain U.S. citizenship, which she never received.

The petitioner also submitted letters from [REDACTED] that all indicated that the petitioner was the victim of extortion and has changed since Mr. [REDACTED] impersonated an immigration agent to obtain the petitioner's money, and then threatened the petitioner and her family. The petitioner submitted a police incident report and a letter from her doctor, [REDACTED] that support her claim that she is the victim of extortion.

Analysis

We review these proceedings *de novo*. A full review of the record, including the brief submitted on appeal, establishes the petitioner's statutory eligibility for U nonimmigrant status.

Extortion under Maryland Law is a Qualifying Crime

The petitioner has established that she was the victim of extortion, a qualifying criminal activity. In her denial decision, the director did not explain why Md. Code Ann. section 3-701 (extortion generally) was not a qualifying crime. As stated in counsel's appeal brief, the director made several factual errors in her decision which do not appear to apply to the petitioner's case, such as stating that the crime certified was

not extortion, when in fact it was. Here, the certifying official stated that the petitioner was the victim of extortion, and listed Maryland's extortion provision as one of the crimes investigated or prosecuted. The petitioner submitted her own declaration, friends and family's statements, news articles, a police incident report, and a doctor's letter that all support that the petitioner was the victim of the qualifying crime of extortion, and there is no evidence in the record that suggests otherwise. Accordingly, the petitioner has demonstrated that she was the victim of extortion, a qualifying crime listed at subsection 101(a)(15)(U)(iii) of the Act. The director's determination to the contrary will be withdrawn.

The Remaining Statutory Criteria

The evidence in the record also establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. In her personal statement, the petitioner indicated that she is scared that when Mr. [REDACTED] and his associates get out of jail they will find her and harm her and her family. She also indicated that as a result of her victimization, she takes medication for depression and anxiety, and is afraid to leave the house, has problems sleeping, and is gaining weight. Dr. [REDACTED] confirmed that he treated the petitioner for depression and anxiety attacks as a result of the visa fraud company who threatened the petitioner. He indicated that the petitioner is on medication and attached copies of the petitioner's prescriptions. Ms. [REDACTED] stated that the petitioner is depressed because she was threatened by an immigration employee. Ms. [REDACTED] and Mr. [REDACTED] both indicated that the petitioner is depressed and that after receiving the threats, she has become scared, has nightmares, and is afraid to leave the house. 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.

Furthermore, the certifying official provided on the Form I-918 Supplement B that the petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States.

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 denied the petitioner's Form I-192 waiver application 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 March 20, 2014. The record indicates that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act, which renders inadmissible any alien present in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). The petitioner admitted in her statement that she last entered the United States in 2002 without inspection, admission or parole. The director did not assess the petitioner's inadmissibility and denied her waiver request based solely on the denial of her Form I-918 U petition. 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 March 20, 2014, decision of the Vermont Service Center 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.