



U.S. Citizenship  
and Immigration  
Services

(b)(6)



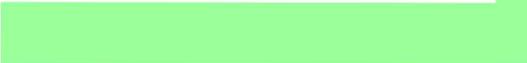
Date: JAN 22 2014

Office: VERMONT SERVICE CENTER



IN RE:

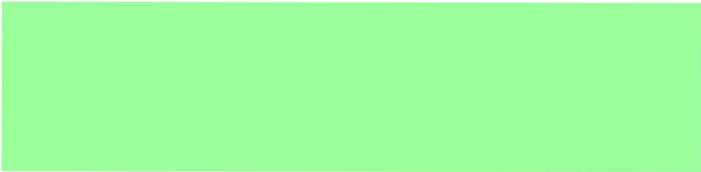
Petitioner:



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 (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 filed a frivolous asylum application and is barred from receiving any benefit under the Act. The director also denied the petition because the petitioner did not meet the requirements under 8 C.F.R. § 214.14(b) for U nonimmigrant status, and she is inadmissible. On appeal, counsel submits a brief and evidence regarding Jordanian country conditions.

*Applicable Law*

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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: . . . domestic violence; . . . 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;

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

Section 208(d)(6) of the Act, 8 U.S.C. § 1158(d)(6), states:

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Facts and Procedural History*

The petitioner is a native of Saudi Arabia and citizen of Jordan who last entered the United States on September 13, 1998 as a nonimmigrant visitor. On February 12, 2002, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal. On March 2, 2005, an immigration judge determined that the petitioner had knowingly filed a frivolous asylum application after proper notice of the consequences and ordered the petitioner removed to Jordan. On June 26, 2006, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal. On January 26, 2009, the United

States Court of Appeals for the Ninth Circuit (hereinafter “Ninth Circuit”) denied her petition for review of the BIA’s decision. *Haniyah v. Mukasey*, 310 F. App’x 190 (9th Cir. 2009).

On March 13, 2012, the petitioner filed the instant Form I-918 U petition. On April 24, 2013, the director denied the petition and the petitioner’s Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

*Analysis*

On appeal, counsel claims that the petitioner meets the qualifications for U nonimmigrant status, that her “misrepresentation” regarding her asylum application is a waivable ground of inadmissibility, and that the petitioner merits a favorable exercise of discretion. We find no error in the director’s decision and the appeal will be dismissed for the following reasons.

Section 208(d)(6) of the Act Bars Approval of the Instant Petition

The record shows that the petitioner falsely testified during her asylum interview under oath after being given notice of the consequences. The petitioner withdrew her application for asylum only after the Immigration Judge confronted her with the discrepancies between the petitioner’s claim and the evidence. The immigration judge determined that the petitioner knowingly made a frivolous application for asylum and the BIA upheld that determination in its dismissal of the petitioner’s appeal. Accordingly, the petitioner is permanently ineligible for any benefits under the Act, including nonimmigrant classification under section 101(a)(15)(U) of the Act.

On appeal, counsel claims that the petitioner’s frivolous asylum application is not a ground of inadmissibility for the Form I-918 U petition, and that her misrepresentation can be waived. Counsel is correct that a frivolity finding is not a ground of inadmissibility; rather, it is a permanent bar to receiving any benefit under the Act, including U nonimmigrant status. *See* section 208(d)(6) of the Act; 8 U.S.C. § 1158(d)(6) (rendering an alien “permanently ineligible for any benefits”). Though inadmissibility due to misrepresentation under section 212(a)(6)(C) of the Act is waivable for certain aliens under section 212(i) of the Act, the bar for frivolous asylum applications at section 208(d)(6) of the Act is not waivable. As such, the petitioner is barred from receiving U nonimmigrant status under section 101(a)(15)(U) of the Act.

The Petitioner has Established that She is the Victim of Qualifying Criminal Activity

The petitioner has established that she was the victim of qualifying criminal activity. In her March 9, 2012 affidavit, the petitioner recounted that she was living in Oregon with her brother when her father came to visit. During an argument, the petitioner’s father hit her and she “became bloody.” The Form I-918 Supplement B, dated February 29, 2012, was signed by (b)(6) (certifying official). The certifying official indicated at Part 3.1 on the Form I-918 Supplement B that the petitioner was the victim of felonious assault. At Part 3.3, the certifying official stated that the crime investigated or prosecuted was section 163.160 of the Oregon Revised Statutes (ORS) – felony assault. The certifying official

stated that on August 23, 2000, the petitioner's father punched her in the face, and grabbed the side of her face and squeezed it.

A preponderance of the evidence submitted demonstrates that the petitioner was the victim of qualifying criminal activity. The Form I-918 Supplement B and other relevant evidence show that law enforcement investigated the crime of felonious assault, an enumerated crime, against the victim. The petitioner has established that she was the victim of qualifying criminal activity as described at section 101(a)(15)(U)(iii) of the Act.

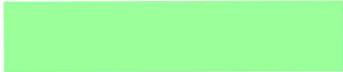
The Petitioner has not Established that she Suffered Substantial Physical or Mental Abuse

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of her victimization. At Part 3.6 of the Form I-918 Supplement B, the certifying official described the petitioner's injuries as a red, bloody nose and some scrapes on her upper chest and bicep area. In her affidavit, the petitioner noted that she is afraid of her father and that she fears he will take revenge on her. The petitioner submitted several affidavits from friends and family in support of her Form I-918 U petition, but none of them describe any injuries or physical or mental abuse the petitioner suffered as a result of her father's assault. This evidence does not demonstrate that the petitioner's father's assault on her caused the petitioner to suffer substantial physical or mental abuse. The petitioner did not provide evidence of, for example, the severity of the harm suffered or any permanent or serious harm the incident caused to her appearance, health, or physical or mental soundness. As such, she has failed to demonstrate that she suffered substantial physical or mental abuse as a result of her victimization as required by section 101(a)(15)(U)(i)(I) of the Act.

The Petitioner is Inadmissible to the United States

Furthermore, the petitioner is ineligible for U nonimmigrant classification because she is inadmissible to the United States and her Form I-192 waiver application was denied. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The director determined that the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud/misrepresentation, and section 212(a)(7)(B)(i)(I), as a nonimmigrant without a valid passport. The record shows and the petitioner does not deny that she is inadmissible under these two grounds. Accordingly, the petitioner cannot be granted U-1 nonimmigrant status because she is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(B)(i)(I) of the Act, her Form I-192 has been denied, and we have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).



*Conclusion*

The petitioner is barred from receiving any benefit under the Act, including U nonimmigrant status, because she filed a frivolous asylum application. She has also failed to establish that she suffered substantial physical or mental abuse as a result of qualifying criminal activity under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1), and her grounds of inadmissibility to the United States have not been waived. The petitioner is consequently ineligible for U nonimmigrant classification and her petition must remain denied.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 appeal is dismissed. The petition remains denied.