



U.S. Citizenship  
and Immigration  
Services

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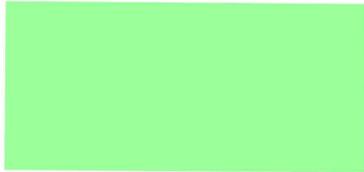


Date:           Office:           VERMONT SERVICE CENTER           FILE:   
NOV 24 2014

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 extortion, she failed to establish that she suffered substantial physical or mental abuse as a result of her victimization. On appeal, counsel submits a brief.

*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[.]

Extortion 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 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 September 1995 without inspection, admission or parole. On November 9, 2001, the petitioner was paroled into the United States until May 8, 2002. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on August 28, 2008. The petitioner's initial Form I-918 Supplement B law enforcement certification was signed by a deputy district attorney with the Office of the [REDACTED], Colorado who certified the petitioner to be a victim of extortion, but listed only felony theft and criminal impersonation as the criminal activity that was investigated or prosecuted and for which the petitioner possessed information and was helpful. The initial law enforcement certification also did not describe any injury to the petitioner as a result of the criminal activity.

On December 21, 2009, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that she suffered substantial abuse as a result of her victimization. Counsel responded to the RFE with an updated Form I-918 Supplement B and additional evidence. The second law enforcement certification was signed by the same deputy district attorney and again affirmed that the petitioner was the victim of extortion, but added criminal extortion to the list of crimes investigated or prosecuted for which the petitioner was helpful and possessed information. The certification also identified anxiety and fear of retaliation as the petitioner's resultant injuries. The director determined that the petitioner was a victim of qualifying criminal activity, but 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 waiver application). The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the director mischaracterized the harm to the petitioner as solely economic and did not consider evidence of the substantial mental abuse she suffered as a result her victimization. *De novo* review of the record<sup>1</sup> 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.

#### *Analysis*

The petitioner's claims relate to her and her husband's defraudation and extortion by [REDACTED] a man who posed as an immigration consultant and real estate agent. In her statements, the petitioner recounted how beginning in March of 2000, Mr. [REDACTED] charged them \$3,100 to apply for a home loan and obtain lawful immigration status. When they realized Mr. [REDACTED] was defrauding them and asked him to refund their money, he threatened to inform immigration authorities and the police and get the petitioner deported. Mr. [REDACTED] also called the petitioner's employer to report that she was undocumented. The petitioner explained that she was pregnant at the time and spent the last four months of her pregnancy feeling frightened, depressed and worrying that she would lose her job and her health insurance. When she returned to work after maternity leave, the petitioner was terminated because her employer verified that she had no social security number. The petitioner explained she was unable to find another job because she was undocumented and she became increasingly depressed and unable to care for and support her four children.

When the petitioner responded to a television news story asking for crime victims to come forward and reported Mr. [REDACTED] actions, he retaliated by filing a restraining order against her based on false claims that she had threatened him. When the petitioner appeared in court to testify against Mr. [REDACTED] he immediately approached her and her husband, called them "dirty immigrants" and threatened to get them imprisoned. In 2001, the [REDACTED] Colorado District Attorney charged Mr. [REDACTED] with four counts of felony theft and criminal impersonation and in 2002, he was ordered to pay restitution to his multiple victims, including the petitioner and her husband.

The petitioner also stated that at the time of these events her husband was subjecting her and her children to domestic violence, which increased her anxiety over Mr. [REDACTED] extortion and threats of deportation. The petitioner explained how her fear of deportation was exacerbated by the thought that she would be removed from the United States and her children would be left with their abusive father. A letter from [REDACTED] confirms that the petitioner was receiving counseling regarding her husband's psychological, sexual and physical abuse throughout their marriage and that after his incarceration, he continued to call her and blame her for his imprisonment. In her evaluation of the petitioner's mental health, psychotherapist [REDACTED] reported that the petitioner divorced her husband after his incarceration, but continued to suffer from flashbacks and nightmares of the period of her victimization by Mr. [REDACTED] exacerbated by her ex-husband's abuse. Ms. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder (PTSD) and depression related to her former husband's domestic violence and the emotional trauma inflicted by Mr. [REDACTED] criminal activities.

In his denial decision, the director acknowledged that the petitioner was defrauded of more than \$3,000 by Mr. [REDACTED] who reported her as undocumented to her employer resulting in the loss of her job. The director described Ms. [REDACTED] evaluation as stating that the petitioner suffered from PTSD and depression based only on her former husband's domestic violence. The director concluded the petitioner had not suffered substantial physical or mental abuse as a result being the victim of Mr. [REDACTED] extortion because "monetary loss associated with criminal activity is not recognized as substantial physical or mental abuse."

*De novo* review shows that the director mischaracterized the relevant evidence. As explained above, the record demonstrates that the petitioner was not only defrauded of \$3,100 as a result of Mr. [REDACTED] criminal activity, but also lost her employment and health insurance when she had just given birth to her youngest child. Contrary to the director's description, Ms. [REDACTED] psychological evaluation attributes the petitioner's PTSD, depression and ongoing symptoms to both her ex-husband's abuse and the emotional trauma she endured during the investigation and prosecution of Mr. [REDACTED]. The record shows that the petitioner was victimized by Mr. [REDACTED] for approximately two and a half years during which time the consequences of his criminal activity exacerbated the effects of her former husband's concurrent domestic violence. *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 preponderance of the evidence demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of extortion, as required by section 101(a)(15)(U)(i)(I) of the Act and under the standards and factors explicated in the regulation at 8 C.F.R. § 214.14(b)(1). 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 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. 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 the petitioner was inadmissible under section 212(a)(6)(A) without analysis and 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 October 30, 2013. Section 212(a)(6)(A)(i) of the Act renders inadmissible any alien present in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). The record shows, however, that the petitioner was paroled into the United States on November 9, 2001 until May 8, 2002. Because she was paroled into the United States, the petitioner is not inadmissible under section 212(a)(6)(A)(i) of the Act. The record indicates, however, that the petitioner remained in the United States beyond the period of parole and is inadmissible under section 212(a)(7)(B) of the Act as a nonimmigrant without a valid passport, nonimmigrant visa or border crossing card. The petitioner submitted a copy of her Mexican passport issued in 2008, which expired on July 16, 2009. On her Form I-918, the petitioner stated that she has no current immigration status in the United States.

The director did not correctly 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 this 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 October 30, 2013 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.