



U.S. Citizenship
and Immigration
Services

(b)(6)

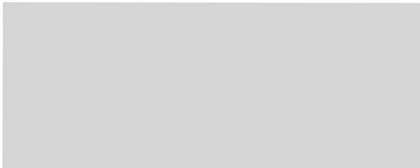


Date: Office: VERMONT SERVICE CENTER FILE: 
APR 01 2015

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:

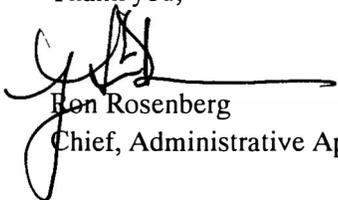


INSTRUCTIONS:

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 Acting 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 appeal will be dismissed and 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 failed to establish that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity, and that she suffered substantial physical or mental abuse as a result of her victimization. On appeal, the petitioner asserts that she suffered substantial mental abuse and submits a psychosocial evaluation from a clinical social worker.

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[.]

* * *

(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[.]

* * *

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii) This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

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 last entered the United States on July 10, 2000 without inspection, admission or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on November 20, 2012. On October 24, 2013, the director issued a Request for Evidence (RFE), requesting in part, evidence that the petitioner was helpful to law enforcement officials in the investigation or prosecution of qualifying criminal activity and that she suffered resultant substantial physical or mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition on March 28, 2014 and the petitioner timely appealed the denial of the Form I-918 U petition.

Claimed Criminal Activity

In her personal statement, the petitioner indicated that she was a victim of domestic violence at the hands of F-D-¹, her boyfriend and later her husband. The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED], Detective, [REDACTED] Texas Police Department (certifying official) on May 22, 2012. The certifying official indicated domestic violence at Part 3.1 as the criminal activity of which the petitioner was a victim. In Part 3.3, the certifying official indicated assault and assault with threat on February 25, 2002, July 2, 2005 and October 28, 2005, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official stated that the petitioner provided information that was relevant to an ongoing investigation and that based on her information, the case ended in an arrest. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated "reports attached." The referenced report is from the [REDACTED] Texas Police Department but does not provide a description of any known or documented injury to the petitioner.

At Part 4 of the Form I-918 Supplement B, which asks about the helpfulness of the victim, the certifying official indicated that the petitioner was crucial in a criminal case that resulted in the removal

¹ Name withheld to protect the individual's identity.

of one person who was purchasing stolen firearms and may have been selling the firearm to gang members in both the United States and Mexico; that the petitioner conveyed to him information about weapons inside her house; and that due to her assistance, the case became a federal case and the weapons were confiscated and the suspect arrested.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the beneficiary's eligibility. The evidence submitted on appeal does not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Substantial Physical or Mental Abuse

The record contains sufficient evidence of the certifying agency's detection and investigation of qualifying domestic violence criminal activity perpetrated against the petitioner, as well as the resultant substantial abuse.

In her statement, the petitioner described instances of verbal, physical and emotional abuse by F-D. She indicated that F-D- injured her eye, pulled her hair, punched her, yelled at her, threw her on the bed and threatened to kill her with a gun. She also indicated that the abuse caused her to become insecure, cowardly and have low self-esteem. The letter from [REDACTED], a Victim Advocate at the Crisis Center in [REDACTED] Texas (the Center), dated October 31, 2011, stated that the petitioner sought services at the Center on June 19, 2006 and June 1, 2011. Ms. [REDACTED] indicated that the petitioner was a victim of verbal abuse, including threats, that her husband had pulled a gun on her on at least three occasions, that the petitioner was fearful for her safety and that she received individual therapy services at the Center. The intake note from the Center counselor indicated no visible injuries to the petitioner, that alcohol played a role in the abuse, and that the abuse was verbal, emotional and psychological. The counselor notes that the petitioner sought assistance at the Center on how to deal with her older child's anger against her for the absence of F-D-, her anxiety of being a single parent, finding suitable employment, and her guilt over her husband going to jail.

In a psychological evaluation dated May 15, 2014, [REDACTED] Clinical Social Worker, stated that subsequent to the petitioner's separation with F-D-, she has been struggling with increasing and worsening depressive symptoms that include: sadness; tearfulness; desire to socially isolate; decreased interest and motivation; difficulty sleeping; feeling of helplessness and hopelessness; decreased appetite; decreased concentration and memory; low self-esteem; and thoughts of suicide. Ms. [REDACTED] diagnosed the petitioner with Major Depressive Disorder, Recurrent Episode, Moderate and Post Traumatic Stress Disorder (PTSD). Ms. [REDACTED] indicated that the petitioner's deteriorating mental health is due to the domestic violence, physical abuse and ongoing immigration uncertainties.

When viewed in its totality, the evidence of record demonstrates that the petitioner suffered substantial mental abuse resulting from domestic violence. The nature, frequency and duration of the domestic violence acts perpetrated by F-D- against the petitioner resulted in serious impairment

to the her mental soundness, health and well-being. See 8 C.F.R. §§ 214.14(a)(8); (b)(1). Consequently, the petitioner has satisfied subsection 101(a)(15)(U)(i)(I) of the Act, and we withdraw the director's contrary determination.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3).

When issuing the RFE in this matter, the director noted that the record contained evidence negating the petitioner's helpfulness in the investigation or prosecution of the domestic violence offenses, and requested the petitioner to submit additional evidence from the certifying official regarding her helpfulness. The petitioner failed to address this issue in response to the RFE and has not briefed it on appeal.

The Form I-918 Supplement B provides that the certifying agency detected domestic violence assaults perpetrated against the petitioner, but it contains ambiguous information regarding the type of criminal activity the petitioner helped the certifying agency investigate or prosecute. The certifying official made it clear that the petitioner was helpful in an investigation and prosecution of illegal weapons-related criminal activity, but he says nothing about the petitioner's helpfulness in the investigation or prosecution of the domestic violence criminal activity that the certifying agency detected. Although domestic violence is specifically listed at section 101(a)(15)(U)(iii) of the Act as qualifying criminal activity, the weapons-related offense investigated and prosecuted in this matter is not, and the petitioner has not established that such crime is substantially similar to a qualifying crime. We maintain the discretion to determine the evidentiary value of submitted evidence, including a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4). The evidence before us does not sufficiently demonstrate that the petitioner was helpful to the certifying agency investigating or prosecuting qualifying criminal activity, namely domestic violence. Accordingly, the petitioner has not satisfied the helpfulness requirement of subsection 101(a)(15)(U)(i)(III) of the Act, and she is ineligible for U nonimmigrant status on this basis alone.

Conclusion

The petitioner has overcome the director's determination that she did not suffer substantial abuse, but has not demonstrated her helpfulness to the certifying agency in the investigation or prosecution of qualifying criminal activity. Accordingly, she is ineligible for U classification because she has not met all prongs of eligibility under section 101(a)(15)(U)(i) of Act. 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.