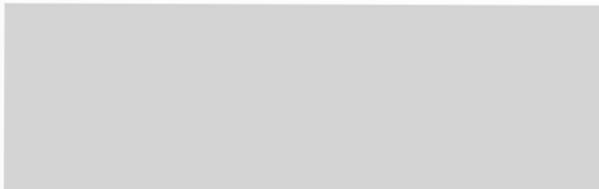




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

APR 17 2015

FILE #:

PETITION RECEIPT #:

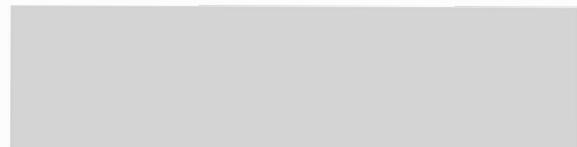
IN RE:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 had suffered substantial physical or mental abuse as a result of her victimization. On appeal, the petitioner submits several statements regarding her victimization.

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[.]

Felonious assault 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[.]

* * *

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 initially entered the United States on May 1, 1992, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with two U Nonimmigrant Status Certifications (Form I-918 Supplement B) on May 20, 2013. On January 24, 2014, the director issued a Request for Evidence (RFE) that the crimes listed on the law enforcement certifications were qualifying crimes and that the petitioner suffered resultant substantial mental or physical abuse. The director also requested a detailed victim statement and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) in order to waive the petitioner's ground of inadmissibility. On February 19, 2014, the petitioner responded with additional evidence and a Form I-192, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner submits three statements describing three separate incidents/crimes.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

The first Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Victim Witness Coordinator, Office of the District Attorney General, [REDACTED] Tennessee (certifying official), on [REDACTED] 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and other: aggravated robbery. In Part 3.3, the certifying official referred to Tennessee Code Annotated (T.C.A.) § 39-13-402, aggravated robbery, as the criminal activity that was investigated or prosecuted.¹ At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she stated that on [REDACTED] 2011, during a robbery at the petitioner's place of employment, a suspect "brandished a gun and pointed it at the victims and took their property. One of the victims of this robbery was [the petitioner]." At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

The second Form I-918 Supplement B that the petitioner submitted was signed by the same certifying official as the first Form I-918 Supplement B and dated [REDACTED] 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault, and at Part 3.3, she referred to T.C.A. § 39-13-102, aggravated 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, she stated that on [REDACTED] 2012, at the petitioner's place of employment, the petitioner was "pushed and then struck by the vehicle of a customer to whom she had just delivered food." At Part 3.6, the certifying official did not list any known or documented injury to the petitioner. We note that the record does not contain any police records or court documents regarding the crimes certified by the certifying official.

In her statement submitted in response to the RFE, the petitioner described the relationship she had with her ex-boyfriend and the mental, verbal, and physical abuse she suffered.² She stated that as a result of the situation with her ex-boyfriend, she has low self-esteem, and she feels sad, insecure, stressed, and nervous. She also recounted an incident when she was robbed at her place of employment by an unknown suspect.³ She was working at the cash register when she was approached by a man with a gun; he demanded money from the petitioner and she gave it to him. She was scared and nervous, and still suffers from nightmares.

In her statements submitted on appeal, the petitioner reiterated the abuse she suffered at the hands of her ex-boyfriend and again described the incident when she was robbed at her place of employment. She added that her life has changed since the robbery; she is always scared, she rarely leaves the house, and she "cannot function like a normal person without getting frightened." The petitioner also recounted an incident that occurred on [REDACTED] 2012, at her place of employment. After the petitioner delivered food to a

¹ The certifying official indicated that Tenn. Code Ann. § 39-13-102, aggravated assault, is a lesser included offense.

² We note that the only court documents in the record pertain to a stalking incident against the petitioner's ex-boyfriend. However, since the petitioner's ex-boyfriend's actions against her do not relate to the crimes certified, they are not relevant to this petition.

³ In her statement, the petitioner claims that this event occurred on [REDACTED] 2012. However, that is inconsistent with the two Forms I-918 Supplement B and her statements on appeal which indicate that this event occurred on [REDACTED] 2011, and the incident in which a customer drove over her foot occurred on [REDACTED] 2012.

customer in his vehicle, the customer drove off without paying, and as he was driving away, he ran over the petitioner's foot and caused her to fall down "to the ground in pain." She was not able to work for a few days after this incident because of the pain, and she is now afraid to go to work because "something bad always" happens.

Factors relevant to a determination of substantial abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. See 8 C.F.R. § 214.14(b)(1). Although the petitioner claims that she is suffering from nightmares, and is afraid to go outside and to work, the Forms I-918 Supplement B and statements from the petitioner fail to probatively discuss any serious harm the incidents caused to the petitioner's appearance, health, or physical or mental soundness. The record does not show that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse. The petitioner's statements indicate that she suffered emotionally when she was robbed and assaulted at her place of employment, but the impact of the crimes on the petitioner's mental health is not sufficiently detailed in the record such that we can conclude that she suffered substantial mental abuse. While we do not minimize the petitioner's victimization, the overall evidence does not establish that she has suffered resultant substantial physical or mental abuse. Under the relevant factors described at 8 C.F.R. § 214.14(b)(1), the evidence in the record does not demonstrate that the petitioner suffered substantial abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.

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 not been met.

ORDER: The appeal is dismissed. The petition remains denied.