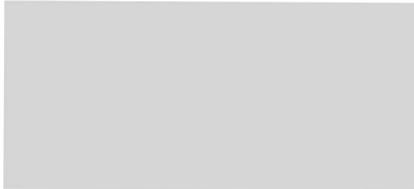




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 24 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded.

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 did not establish that he was the victim of qualifying criminal activity that was investigated or prosecuted, and, therefore, also failed to establish substantial abuse, possession of information, and helpfulness to law enforcement authorities related to the investigated or prosecuted criminal activity. On appeal, the petitioner submits a brief and additional 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: . . . manslaughter; murder; felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a)(5) states that the term “investigation or prosecution,” as used in section 101(a)(15)(U)(i)(III) of the Act, “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

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).

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 . . . :

* * *

(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[.]

* * *

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, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity[.]

(ii) Any additional evidence that the petitioner wants [U.S. Citizenship and Immigration Services (USCIS)] to consider to establish that: . . . the petitioner . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or other authority . . . investigating or prosecuting the criminal activity of which the petitioner is a victim[.]

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, a native and citizen of Mexico, represents that he last entered the United States in May 1999, without inspection, admission, or parole by an immigration officer, after having been removed to Mexico on August 13, 1998. In 1999, the petitioner was involved in the incident giving rise to the instant Petition for U Nonimmigrant Status (Form I-918 U petition). The petitioner disclosed that in 2012, he was convicted for illegal manufacture of drugs¹ and attempted trafficking in drugs. The petitioner's prior order of removal was reinstated on January 7, 2013, and he remains in the United States under a U.S. Immigration and Customs Enforcement (ICE) Order of Supervision.

The petitioner filed the instant Form I-918 U petition on May 16, 2013, with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B). On the same day, the petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The director issued a Request for Evidence (RFE) of investigation or prosecution of a qualifying crime, and the petitioner's helpfulness to law enforcement. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director denied the Form I-918 U petition, and the petitioner timely appealed. On appeal, the petitioner submits a brief and additional evidence to establish his eligibility.

Claimed Criminal Activity

In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B signed by [REDACTED] City Prosecutor, [REDACTED] Ohio, Police Department (certifying official). In Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal act as attempted murder. In section 3.3, the certifying official failed to list a statutory citation for the criminal activity

¹ There is conflicting evidence in the record as to whether the petitioner was convicted of this crime.

being investigated or prosecuted, and instead described it as a “gunshot victim investigation.” Attached to the Form I-918 Supplement B were numerous police reports describing the incident. The police reports indicate that in the early hours of October 16, 1999, the [REDACTED] Ohio Police Department responded to an emergency call from a private home and encountered the petitioner, who had been shot in the head. The petitioner, then unconscious, was attended to by emergency medical personnel, transported to a local emergency room, and later airlifted to another hospital. The reports indicate the approximately eight individuals present at the scene initially disclaimed knowledge of the incident, and the gun and the bullet casings had been removed. In subsequent interviews, witnesses reported that individuals present at the home at the time of the shooting were using alcohol and crack cocaine, and playing cards, and that the petitioner shot himself. The police reports also state that witnesses saw the owner of the gun, [REDACTED], pick up the gun and the casings and leave the premises immediately after the petitioner was shot. [REDACTED] had not been seen since the incident, and was not interviewed by police. The gun used in the shooting was later recovered in [REDACTED] back yard, wrapped in toilet paper. Crime lab analysis determined that there were no fingerprints on the gun, but that the petitioner had gun residue on his hands.

In December 1999, the petitioner’s sister-in-law informed police that the petitioner had recovered his ability to speak, and had told his mother that [REDACTED] shot him. Police interviewed the petitioner in the hospital in January 2000, and he told them that on the night of the incident, he was playing poker with [REDACTED] and other individuals. The petitioner stated that he and [REDACTED] were the last players in, and the petitioner ultimately won the \$200 pot. The petitioner stated that [REDACTED] told him to give him the money or he would kill him. He recounted that [REDACTED] stepped out of the back door of the home and fired a shot into the air. He stated that everyone else ran out of the room except another individual (whose name was redacted on the police report), who grabbed the petitioner and prevented him from exiting the room. The petitioner stated that [REDACTED] ran back into the room and shot him. The police reports reflect that after taking the petitioner’s testimony, a witness was reinterviewed, who maintained that the petitioner shot himself. The petitioner ultimately told police that he did not want to file charges and would not testify in court. In his personal affidavit, dated April 26, 2013, the petitioner stated that after awakening from the coma, he learned that the person that had shot him had left the country, and that he therefore could not press charges.

In the RFE, the director informed the petitioner that the portion of the Form I-918 Supplement B, Part 3.3, which described the investigated statutes as “gunshot victim investigation,” was insufficient to establish that a qualifying crime had been investigated. In response to the RFE, the petitioner submitted a new Form I-918 Supplement B, signed by [REDACTED] Ohio, City Prosecutor, which provided statutory citations at Part 3.3 indicating that the investigated criminal activity included the attempt and/or commission of felonious assault, voluntary manslaughter, and murder. The petitioner also submitted a letter from the certifying official, Mr. [REDACTED] indicating that these crimes were investigated, and that the investigative reports note uncertainty regarding the true version of events leading to the petitioner’s injuries. Mr. [REDACTED] advised that the case was not closed, and that there are suspects still at large.

Analysis

We review these proceedings *de novo*. Upon review of the entire record of proceeding, as supplemented on appeal, the petitioner has overcome the director's grounds for denial, as described below.

Qualifying Criminal Activity

The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity, due to the lack of clarity in the police reports as to what actually occurred. In so finding, the director improperly discounted the evidence submitted in response to the RFE, including the second Form I-918 Supplement B and the letter from the ██████████ City Prosecutor, both of which confirm that qualifying criminal activity was investigated. We observe that the petitioner maintains that he was shot by an individual who police reports indicate disappeared immediately following the shooting. Further, the police reports establish that the gun used in the shooting was found in this individual's backyard, wrapped in toilet paper, wiped clean of fingerprints, during the period when the petitioner was hospitalized in a coma.

On appeal, the petitioner submits a report from forensic pathologist Dr. ██████████ dated August 16, 2014. In the report, Dr. ██████████ states that after examining the police reports and the petitioner's medical records, she concludes that the petitioner's injuries are not consistent with a self-inflicted gunshot wound. She points out that an eye witness account claiming that the petitioner gripped the gun and slid down a wall after he shot himself could not have been accurate in light of the injury that the petitioner sustained. She further notes that the fact that the petitioner had gun residue on his hands is indicative only of his proximity to the gun shot, and does not establish that he pulled the trigger. Dr. ██████████ observes that the accused assailant's hands were not tested. She also notes that the trajectory of the bullet through the petitioner's head was not consistent with an accidental Russian roulette injury, as some witnesses claimed.

To demonstrate eligibility under section 101(a)(15)(U)(i)(III) of the Act, the petitioner must show that authorities are "investigating or prosecuting" the qualifying criminal activity of which he was a victim. The regulation at 8 C.F.R. § 214.14(a)(5), defines "investigation or prosecution" as "the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." Here, the second Supplement B submitted by the petitioner, as well as the letter from the ██████████ City Prosecutor, clearly states that authorities investigated several qualifying crimes in regard to the incident of which the petitioner was a victim. The fact that the investigation was inconclusive as to whether the crimes occurred is not relevant to the petitioner's eligibility. The director incorrectly determined that because the investigative documents do not clearly establish the circumstances of the crime, the petitioner is precluded from demonstrating that a qualifying crime was investigated. The regulation at 8 C.F.R. § 214.14(a)(14)(iii) states that "[a] person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a

victim of the qualifying criminal activity.” Here, the preponderance of the relevant evidence does not establish that the petitioner was responsible for the incident that resulted in his injuries.

The petitioner has therefore demonstrated that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act. The director’s determination to the contrary is hereby withdrawn.

Helpfulness to Authorities

The petitioner has sufficiently established his helpfulness in the investigation and prosecution of qualifying criminal activity as required by section 101(a)(15)(U)(i)(III) of the Act and by regulation at 8 C.F.R. § 214.14(b)(3). Contrary to the director’s decision, which indicated that the petitioner submitted insufficient evidence to establish that he was helpful, the record indicates that the petitioner made a statement to police from the hospital, identifying his assailant and providing his version of the incident. Although the police report indicates that the petitioner stated that he did not want to press charges, the City Prosecutor certified that the petitioner had been helpful in the investigation by identifying the shooter, and clarified that the petitioner indicated that he could not press charges against the assailant as he was informed that he had fled to Mexico. The City Prosecutor confirmed that the petitioner has continued to be helpful in the investigation of the criminal activity of which he was a victim. Accordingly, the petitioner has established his helpfulness to authorities as required by section 101(a)(15)(U)(i)(III) of the Act. The director’s findings to the contrary are hereby withdrawn.

Substantial Physical or Mental Abuse and Possession of Information Concerning Qualifying Criminal Activity

The director concluded that the petitioner, who was paralyzed by the shooting, sustained substantial physical injury, and also that he possessed information concerning the incident; however, based on her determination that the shooting did not constitute qualifying criminal activity, the director found that the petitioner failed to establish his eligibility under these two grounds. As we have reversed the director’s finding with respect to the qualifying criminal activity, we now find that the petitioner has demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act. The director’s findings to the contrary are hereby withdrawn.

Admissibility

Notwithstanding our withdrawal of the director’s determination, the instant petition may not be approved because the petitioner remains inadmissible to the United States and his 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. The director did not indicate under which sections of the Act the petitioner is inadmissible; however, we observe that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) (present in the United States without admission or parole). His convictions may also render him inadmissible, but the record, as currently constituted, contains insufficient information to make this determination. The director did not indicate whether USCIS would have favorably exercised its discretion and approved the waiver. Rather, the director denied the waiver request based solely on the denial of the petitioner's 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.

ORDER: The director's decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 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.