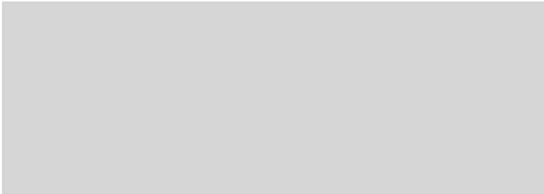


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



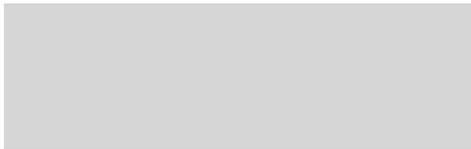
Date: **APR 30 2015**

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:



INSTRUCTIONS:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter returned for entry of a new decision.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 the petitioner failed to demonstrate that he was helpful to law enforcement in the investigation or prosecution of the crime. On appeal, the petitioner 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;

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.”

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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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).

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[es] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in November 2008 without inspection, admission, or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 30, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. The director subsequently issued a Request for Evidence (RFE) requesting that the petitioner establish his helpfulness to law enforcement in investigating or prosecuting the claimed criminal activity. The petitioner submitted a brief and additional evidence in response to the RFE 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 asserts that the regulations do not require a petitioner to participate in the prosecution against the criminal perpetrator so long as he is helpful in investigating the criminal activity, and that no evidence in the record suggests that the petitioner did not assist the certifying agency when requested.

Analysis

The AAO conducts appellate review on a *de novo* basis. Upon review, we withdraw the director’s determination that the petitioner was not helpful to law enforcement authorities; however, the evidence

in the record does not establish that the petitioner suffered substantial physical or mental abuse as a result of the criminal activity. Accordingly, we will remand the matter for entry of a new decision.

Helpfulness to Law Enforcement

The record contains a law enforcement certification signed by [REDACTED] support services manager, (certifying official) of the [REDACTED] Washington Police Department, dated June 24, 2013. The Form I-918 Supplement B relates to an incident that occurred on [REDACTED] 2012. The certifying official indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law enforcement authorities in the investigation or prosecution of criminal activity. The certifying official stated in Part 4.5 that the petitioner “cooperated fully with the police officer who was dispatched to the scene.” In a letter dated May 7, 2014, submitted in response to the director’s RFE, the certifying official stated that the petitioner cooperated fully with the officers dispatched to the scene of the crime and “there is no indication that [the petitioner] refused to provide any requested information.” She further notes that the certifying agency has not requested any additional information from the petitioner and that the petitioner has not refused to cooperate whenever such a request was made. In addition, the petitioner submitted a statement dated May 15, 2014 where he explained that he did not understand the phrase “press charges” and now that the phrase has been explained to him, that he would be willing to assist in any prosecution efforts against the perpetrator.

In her denial decision, the director stated that although the evidence in the record indicated that the petitioner cooperated with law enforcement dispatched to the scene of the crime, the petitioner indicated that he was unwilling to press charges against the criminal perpetrator. The director concluded that this statement indicates that the petitioner fails to meet the requirement to provide continued assistance to law enforcement. On appeal, the petitioner states that he was helpful when the situation required him to be so and the outcome of a case, and whether or how law enforcement decides to proceed with the case, is irrelevant to whether the petitioner provided the help required to be eligible for U nonimmigrant classification. The petitioner notes that he provided all information and assistance requested by law enforcement from the date of the criminal offense onwards.

The director’s finding that the petitioner did not provide ongoing assistance in the investigation or prosecution of his assault is not supported by the record. The regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that “since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested.” The certifying official certified the petitioner’s helpfulness and further indicated that the petitioner did not unreasonably refuse to provide continued assistance in the investigation or prosecution of the criminal activity. There is no evidence that after the petitioner’s initial cooperation, he was requested to provide further assistance to the certifying agency and refused to cooperate. Accordingly, we withdraw the director’s finding that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity. The petition is not approvable, however, because the record fails to show resultant substantial abuse.

Substantial Physical or Mental Abuse

The petitioner's July 25, 2013 declaration states that he drove into a commercial parking lot on [REDACTED] 2012 and noticed that someone was following him. As he turned into a parking spot, the car following him suddenly turned and parked nearby. The petitioner left his car to go into the store and the man in the other car began yelling at and insulting him. The petitioner went into the store to conduct his business, noticing that the man had driven his car closer and appeared to be waiting for him to return. The petitioner returned to his car and saw that the man in the other had a gun and appeared to be aiming in his direction. The petitioner exited his car, looked at the man's license plate, and called 911. The man drove up to the petitioner, pointed his gun again, and then left. The petitioner explained to the responding officers what had occurred; the man was not apprehended.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity,¹ USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, the certifying official did not indicate that the petitioner suffered any physical injury and did not comment on the petitioner's mental condition. In his declaration, the petitioner states that he is more cautious after the assault. He states that he pays more

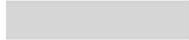
¹ The eligibility requirements for U nonimmigrant classification are further explained in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(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 governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in pertinent part:

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.



attention to his surroundings and to people he does not know. He further states that he is more anxious than he was prior to the criminal incident and that he gets worried that something might happen when an unfamiliar car parks near his or an unfamiliar man looks at him.

The record as presently constituted is insufficient to demonstrate that the petitioner suffered substantial physical or mental abuse as the result of his victimization under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). As noted herein, the Form I-918 Supplement B does not describe any injuries to the petitioner, and the petitioner's statement only describes his resulting mental state in general terms.

As we have withdrawn the only ground of ineligibility identified by the director in denying the petition and the record as presently constituted indicates that the petitioner is ineligible under another ground, we remand the matter to the director for issuance of a new decision.

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 regarding the petitioner's helpfulness to law enforcement. However, the petition is not approvable because the record does not contain sufficient evidence of substantial physical or mental abuse suffered by the petitioner as a result of the certified criminal activity. Accordingly, the matter will be remanded to the director for further action consistent with this decision and issuance of a new decision.

ORDER: The director's July 11, 2014 decision is withdrawn. The matter is returned to the director for 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.