



U.S. Citizenship  
and Immigration  
Services

(b)(6)



APR 30 2015

DATE:

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](http://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 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 did not establish that she was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, the petitioner submits a brief, additional evidence and copies of documents already included in the record.

*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[.]

\* \* \*

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 Guatemala who claims to have last entered the United States in May, 2005, 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 April 8, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On January 7, 2014, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered resultant substantial mental or physical abuse. The petitioner responded to the RFE with additional evidence, and on May 30, 2014, the director issued a Notice of Intent to Deny (NOID) requesting evidence of the specific statute cited on the Form I-918 Supplement B and additional evidence of substantial mental or physical abuse as a result of qualifying criminal activity. The petitioner responded to the NOID with additional evidence, 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 claims that she is the victim of domestic violence harassment which is a qualifying crime, and she has met all the other requirements for a U nonimmigrant visa.

*Claimed Criminal Activity*

In her declarations, the petitioner recounted that she started dating her ex-boyfriend in 2006 and shortly after they started dating, he began to hit her every weekend when he was drunk. When she was three months pregnant with their first child, she separated from her ex-boyfriend because of the abuse. However, he convinced her that he would stop abusing her and she moved back in with him. After their son was born, her ex-boyfriend began to hit her again and he threatened to “mark [her] with a knife” if she called the police.

When the petitioner became pregnant with their second child, the abuse stopped for a short time but after she gave birth to their daughter, he began hitting her again and even caused her cesarean incision to start bleeding. On that day, the petitioner decided to leave her ex-boyfriend. On March 21, 2009, the petitioner called the police after her ex-boyfriend hit her. The petitioner was afraid to tell the police about all of the abuse because of the threats her ex-boyfriend had made to her but he was arrested that day. After he was arrested, the petitioner’s ex-boyfriend started calling and threatening her.

The Form I-918 Supplement B that the petitioner submitted was signed by Sergeant [REDACTED] Alabama, Police Department (certifying official), on October 9, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official indicates that harassment was investigated or prosecuted, without listing the statutory citation. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that on March 21, 2009, “the man [the petitioner] was living with began drinking in the morning and then became angry with her. He pushed her and pulled her hair. [The petitioner] states that every time that he drinks he gets angry and acts up and that she is tired of him. The perpetrator was arrested and removed from the home.” At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

*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.

Victim of Qualifying Criminal Activity

The Form I-918 Supplement B and the Alabama Uniform Incident/Offense Report dated March 21, 2009, indicate that harassment was investigated. Under the Alabama Code, a person is guilty of harassment “if, with the intent to harass, annoy, or alarm another person, he or she either: (a) Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact . . . .” Ala. Code § 13A-11-8 (West 2015). “A person commits domestic violence in the third degree if the person commits . . . the crime of harassment pursuant to subsection (a) of Section 13A-11-8; and the victim is . . . any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.” Ala. Code § 13A-6-132(a) (West 2015).

Although Ala. Code § 13A-11-8 provides for a general definition of harassment, the criminal activity investigated by the [REDACTED] Police Department was a domestic violence offense based upon the petitioner’s relationship to the perpetrator, with the offense being harassment. See Ala. Code

§ 13A-6-132(a) (which provides that the term *domestic violence* includes the crime of harassment when the victim has a child in common with the defendant, is a household member, or is in a dating relationship with the defendant). The Alabama Uniform Incident/Offense Report indicates that the petitioner and the offender of the harassment resided at the same address and according to the petitioner “her husband” committed the crime against her. In addition, the certifying official in the Form I-918 Supplement B stated that the petitioner resided with the man who perpetrated the crime against her. Here, the certifying official has certified and the record demonstrates that the petitioner was a victim of a domestic violence crime. Accordingly, she has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director’s contrary determination.

#### Substantial Physical or Mental Abuse

The petitioner has not, however, established that she suffered substantial physical or mental abuse as a result of her victimization. In her affidavits, the petitioner failed to describe any substantial physical or mental abuse she suffered as a result of the certified qualifying criminal activity. In his report dated April 3, 2013, Dr. [REDACTED] a psychologist, diagnosed the petitioner with anxiety disorder, in partial remission. According to the petitioner, her father was never in her life, she was physically abused by her uncle and mother as a child, and at 15 years old, she began working to avoid being around her mother. Dr. [REDACTED] indicated that the petitioner’s “complicated and unfortunate psychosocial history . . . is likely to have rendered her more vulnerable to the impact of [the perpetrator’s] emotional and physical abuse than the typical young woman.” In his March 31, 2014, addendum to the psychological report, Dr. [REDACTED] indicates that the petitioner “experienced substantial physical and emotional abuse at the hands of [the perpetrator] . . . and her life was gravely impacted by the latter’s actions,” but her “current psychosocial functioning is devoid of serious pathology.” Dr. [REDACTED] also noted that since the petitioner’s ex-boyfriend was removed from the United States, he has had no contact with the petitioner or their children.

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 was diagnosed with anxiety disorder, the Form I-918 Supplement B, the incident report, statements from the petitioner, and mental health documents fail to probatively discuss any serious harm the incident 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 generally that she suffered years of physical and mental abuse by her ex-boyfriend, but she provided no further information in her statements regarding the effects of the abuse or any ongoing trauma. In addition, although Dr. [REDACTED] diagnosed the petitioner with anxiety disorder in 2013, he indicates in his updated statement that she currently has no “serious pathology.” 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*

The petitioner has demonstrated that she was the victim of qualifying criminal activity but has not shown that her victimization resulted in substantial abuse as required by section 101(a)(15)(U)(i)(I) of the Act. Consequently, her petition must remain denied. 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.