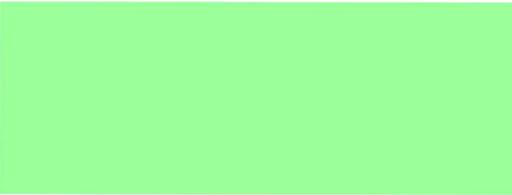


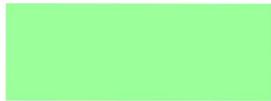
(b)(6)

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**



Date: **FEB 04 2015** Office: VERMONT SERVICE CENTER FILE: 

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

Page 2

DISCUSSION: The Vermont Service Center acting director (the director) denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 although the petitioner established that he was the victim of qualifying criminal activity, he failed to establish that he suffered substantial physical or mental abuse as a result of his victimization. On appeal, counsel submits a brief and additional evidence.

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 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), 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."

Relevant Procedural History

The petitioner is a native and citizen of Mexico who last entered the United States in July 2007 without admission, inspection 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 10, 2012. 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) that, among other things, the petitioner suffered substantial physical or mental abuse as a result of a qualifying criminal activity. The petitioner responded 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 timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner contends that he suffered substantial mental abuse as a result of having been a victim of qualifying criminal activity.

Analysis

We conduct appellate review on a *de novo* basis. Based upon the evidence, we withdraw the director's determination that the petitioner did not suffer substantial physical or mental abuse and find that he has satisfied section 101(a)(15)(U)(i)(I) of the Act.

The petitioner submitted two Forms I-918 Supplement B, U Nonimmigrant Certification (Form I-918 Supplement B), regarding two incidents of felonious assault at his place of work at the time. Both forms indicated that the petitioner was hit in the head and face by the perpetrators of the incidents as well as sprayed with mace. The petitioner submitted three affidavits in which he described these two incidents, occurring less than two months apart, and the substantial and lasting harm he continues to suffer as a cumulative result. The petitioner recounted that on November 4, 2011, while at work in a beauty supply store, he was sprayed in the eyes and face with pepper spray by a female perpetrator who was trying to steal from the store. The police report relays the petitioner's contemporaneous statement that when he learned that a female perpetrator was trying to leave the store with merchandise for which she did not pay, he intervened, and she sprayed mace directly in his face. The officer noted that he took photographs of the petitioner's face. The photographs, submitted for the record, show the petitioner with significant redness in the areas of his left eye and left cheek.

The petitioner further recounted that on December 31, 2011, three females came in to the store, one destroyed some packaging, others took merchandise without paying, and when he and a coworker intervened, one of the assailants punched him in the head before all three drove off. The petitioner stated that he immediately reported the crime to police and identified the suspects who were then arrested and charged. He described in detail how this event compounded his fears and he worried that the various perpetrators would return and retaliate against him and his family, a fear that caused him many sleepless nights and great anxiety for which he sought and has continued to receive psychological therapy. The petitioner explained the traumatic cumulative impact these events have had on his life, forcing him to leave his job after which his fears still did not diminish. The petitioner recounted that he could not sleep through the night, when he did sleep, he would wake up from nightmares, he began to feel progressively more sad, anxious, and irritable, he no longer wanted to go out with his family and he felt unsafe fearing that the assailants would seek revenge against him or his family for cooperating with police. The petitioner stated that he realized he needed psychological help and he contacted his first therapist, [REDACTED] MSW, LICSW).

The petitioner recalled that he did not feel he was getting enough help from his first therapist and ultimately postponed his sessions due to financial reasons in addition to not spending adequate time with his family as he was also going to school to earn his general equivalency diploma (GED). He stated that he noticed his symptoms returning for which his wife asked him to seek help again. The petitioner recalled that he contacted [REDACTED] MA, LPCC, RPT), who informed him that as a crime victim, he may be eligible for financial assistance for therapy-related expenses. He stated that [REDACTED] is helping him little by little to overcome his trauma and gives him exercises to practice at home which have led to him beginning to feel a small improvement.

Page 5

The petitioner also submitted an affidavit from his wife, as well as three mental health assessments. The petitioner's wife, [REDACTED] stated that after the petitioner became a crime victim at work she recommended that he change jobs to avoid further incidents, but he could not due to their financial situation. [REDACTED] recalled that despite ultimately securing new employment with less exposure, the petitioner's worries only increased and he suffered nightmares and had great difficulties sleeping along with other related symptoms. [REDACTED] recommended that the petitioner see a psychologist which she believes is helping his symptoms to improve.

[REDACTED] a psychotherapist, stated that the petitioner participated in twelve psychotherapy sessions from November 2012 through May 2013 because he was experiencing great emotional distress after being beaten, assaulted, hit on the head, and sprayed with mace during the course of two criminal incidents in his workplace. [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder; Major Depression, Recurrent; and Partner Relational Problems as a result. She explained that although the petitioner experienced improvement during the course of therapy, he was unable to continue as a result of financial constraints and increased time commitments to work and school.

[REDACTED], a mental health therapist, stated that the petitioner was referred for individual mental health therapy, with sessions beginning on September 25, 2013, to address symptoms related to having been physically assaulted at his workplace during a robbery in which gas was sprayed in his face and eyes. [REDACTED] confirmed that she referred the petitioner to the Minnesota Crime Victims Reparations Board for financial assistance with therapy-related services as the victim of a crime. [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder, as evidenced by numerous significant symptoms she described in detail in her assessments. She stated in her April 21, 2014 assessment that she has continued to treat the petitioner bimonthly since September 2013.

The severity of the perpetrators' conduct and its lasting impact on the petitioner's health and mental soundness amounts to substantial mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the preponderance of the evidence demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of felonious assault, as required by section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

Admissibility

Although the petitioner has established his statutory eligibility for U nonimmigrant classification, the petition may not be approved because he 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 determined that the petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act (present without admission or parole). The director denied the Form I-918 waiver application, without analysis, solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated March 20, 2014. Because the petitioner has overcome the 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 as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and his waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The director's March 20, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application 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.