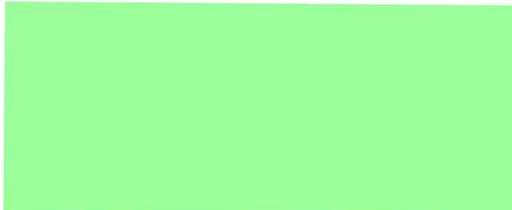




U.S. Citizenship
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Services

(b)(6)



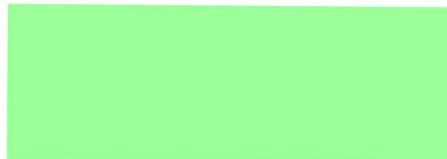
Date: **FEB 05 2015** Office: VERMONT SERVICE CENTER

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 he was the victim of qualifying criminal activity and suffered resultant substantial physical or mental abuse. On appeal, the petitioner submits a brief 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), 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 entered the United States on February 17, 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 October 23, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On October 17, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and the petitioner was a victim of substantial or physical abuse as a result of the qualifying crime. The director also requested a copy of the petitioner's valid passport or border crossing card. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. 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 claims that he was a victim of domestic violence harassment which should be considered a qualifying crime. In addition, the petitioner states that he suffered physical and psychological injuries as a result of the crime committed against him.

Claimed Criminal Activity

In his statements, the petitioner recounted that on February [REDACTED] he was assaulted in his house by his roommate. The petitioner was hit and kicked in his stomach and ribs. The police were called and they arrested his roommate, and took the petitioner to the hospital. It took the petitioner several days to recuperate and he was unable to work in the fields for a week.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Records Supervisor, [REDACTED] Oregon, Police Department (certifying official), on April [REDACTED]. 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 refers to Oregon Revised Statutes (O.R.S.) § 166.065, harassment, 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 indicated that the petitioner was attacked by the suspect, “who was cohabitating with him at the time of the assault. [The suspect] and two other people kicked the [petitioner] in the abdomen/stomach area.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner “was seen by the [REDACTED] Fire Department when they responded to the scene. On that same day he also went to the [REDACTED] for a check-up. He was suffering from pain to his abdomen/stomach area. He was prescribed pain medication.”

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 indicates that harassment was investigated and the [REDACTED] Oregon, Probable Cause Statement dated February 15, 2009, indicates that harassment (domestic) was investigated. Under the Oregon Revised Statutes, a person is guilty of harassment “if the person intentionally: (a) Harasses or annoys another person by: (A) Subjecting such other person to offensive physical contact” O.R.S. § 166.065(1) (West 2014). Domestic violence harassment is committed against a family or household member. O.R.S. § 135.230(3) (West 2014). A family or household member can be “[p]ersons cohabitating with each other” O.R.S. § 135.230(4)(d) (West 2014).

Although O.R.S § 166.065 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 O.R.S. § 135.230(3) (which provides that the term *domestic violence* includes crimes when committed by one family or household member against another). Here, the certifying official has certified and the record demonstrates that the petitioner was a victim of a domestic violence crime. Accordingly, he 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

In the probable cause statement, a police officer indicated that according to the petitioner, the petitioner was kicked in the stomach by the suspect, and the police officer noted that there was a shoe print on the petitioner's shirt but he "did not see any redness or swelling." In the Fire District EMS report dated February the provider indicated that the petitioner complained of abdominal pain after being kicked by the suspect but he "showed no signs of trauma." At Part 3.6 of the Form I-918 Supplement B, the certifying official indicated that after the incident, the petitioner went to the hospital for pain to his abdomen/stomach area and was prescribed pain medication. Medical documents in the record show that the petitioner went to the hospital, he was given intravenous pain medication, and was discharged. The petitioner claims that he was unable to work in the fields for a week because of the abdominal pain. In addition, the petitioner states that he lives in fear that he will be attacked again, he does not like to go out in public, he worries walking at night, and he has nightmares about the incident.

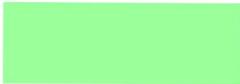
Factors relevant to a determination of substantial abuse include the nature of the injury, the severity of the perpetrator's conduct and harm that was suffered, the duration of the harm, and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. See 8 C.F.R. § 214.14(b)(1).

The evidence establishes that the petitioner was kicked in the abdomen and suffered resulting pain that led him to seek medical attention and to refrain from working in the fields for one week. The petitioner states that he has resulting fears of being around people who drink as well as nightmares about the incident, but he fails to probatively describe any serious harm that the incident caused to his appearance, health, or physical or mental soundness. Similarly, information provided on the Form I-918 Supplement B and in the medical records regarding the nature of the petitioner's injury does not demonstrate the severity of the harm. We do not minimize the petitioner's victimization; however, the overall evidence does not establish that he suffered substantial physical or mental abuse resulting from the altercation with this former roommate under the relevant factors described at 8 C.F.R. § 214.14(b)(1).

Conclusion

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

(b)(6)



NON-PRECEDENT DECISION

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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.