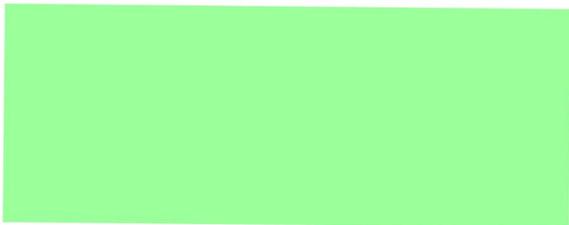


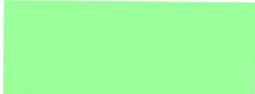
(b)(6)

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



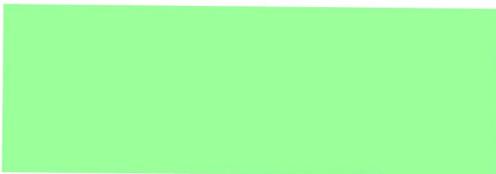
U.S. Citizenship
and Immigration
Services



Date: FEB 06 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)

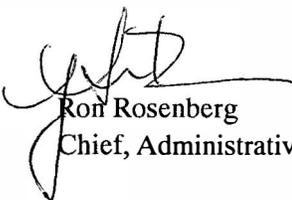
ON BEHALF OF PETITIONER:


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

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 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 suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, and because the petitioner is inadmissible to the United States and his Form I-192, Advance Permission to Enter as a Nonimmigrant (Form I-192) has been denied. On appeal, the petitioner 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.

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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 El Salvador who claims to have last entered the United States in early 2001, when he was 12 years old, without admission, inspection or parole. On November 7, 2011, an immigration judge ordered the petitioner removed from the United States and he was so removed on November 23, 2011. 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 December 17, 2012. On October 28, 2013, the director issued a Request for Evidence (RFE) of, among other things, the requisite substantial physical or mental abuse and that the petitioner submit a Form I-192 to request a waiver of his grounds of inadmissibility. The petitioner filed a Form I-192 on January 23, 2014 and responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. On April 2, 2014, the director denied the Form I-192, finding that the petitioner was

inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (crimes involving a controlled substance); 212(a)(2)(C) (controlled substance trafficker, reason to believe); 212(a)(6)(A)(i) (present without admission or parole); 212(a)(9)(B)(i)(II) (unlawful presence in the United States for one year or more); and 212(a)(9)(A)(ii) (prior removal from the United States), and that he had not demonstrated that his application for a waiver of inadmissibility warranted a favorable exercise of discretion. As the petitioner was found inadmissible and his Form I-192 had been denied, the director consequently also denied his Form I-918 U petition in addition to denying the petition for failing to establish that the petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The petitioner timely appealed the denial of the Form I-918 U petition.

Analysis

Substantial Physical or Mental Abuse

We conduct appellate review on a *de novo* basis. Our review of the denial decision and the supporting evidence reveals no error in the director's determination that the petitioner has not demonstrated that he suffered substantial physical or mental abuse as a result of the certified crime committed against him.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (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).

The Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED] of the [REDACTED] Police Department (certifying official), on October [REDACTED]. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and assault. At Part 3.3, the certifying official referred to California Penal Code (CPC) § 245(a) 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, he indicated that the petitioner "was assaulted by several other students at school. He was kicked in the head and neck."

At Part 3.6 of the Supplement B, which asks the certifying official to provide a description of any known or documented injury to the victim, he indicated: "Redness, swelling, minor cuts on the face and scrapes on his hands and forearms." The police report documented redness and swelling on the petitioner's face, minor cuts and scrapes on his hands and forearms, and that he declined medical treatment. The emergency room report indicates that the petitioner was kicked in the head and neck, did not lose consciousness but was dazed, complained of pain in the right side of his head and neck, and had a small abrasion on his right hand. The report concludes that the petitioner meets no nexus criteria for any further evaluation of his head injury, had no loss of consciousness or visible lesions, and would be discharged with instructions for head and neck injuries and abrasions along with a prescription for ibuprofen.

In his initial declaration, the petitioner stated that on November 9, 2004, while walking home from school with his then girlfriend, six persons attacked from behind and hit his body and face, some with small bats. He recalled that they threw him to the ground, kicked his head, and he lost consciousness. The petitioner claimed that he woke up surrounded by police and firefighters whom he told he did not want to go to the hospital. A school representative took him to the office to call his mother and while there, police asked what happened and showed him photographs from which he was able to identify one of the suspects. The school representative took the petitioner and his mother home and his mother decided to take him to the hospital. The petitioner claimed that doctors told him he was “lucky that the beatings did not cause injuries in the brain but they did not assure another damage in the future.” There is no record of such statements in the report. Rather, it concludes that the petitioner meets no nexus criteria for any further evaluation of his head injury. Further, the petitioner’s statement that some of the perpetrators hit him with small bats is inconsistent with the accounts he gave on the day of the incident to police (punched with closed fists and kicked with shod feet), and to medical personnel (kicked in the head and neck).

In his second declaration, submitted in response to the RFE, the petitioner repeated claims from his first and added that he does not remember police officers asking how he was beaten and he does not know whether they realized he had been unconscious when they arrived on the scene. The petitioner further claimed that the emergency room report did not mention that he had been unconscious because he was conscious when he arrived.¹

The petitioner also submitted an undated psychological assessment. Therein psychologist, [REDACTED] relayed the November 2004 incident as told to her by the petitioner, and diagnosed him with post-traumatic stress disorder (PTSD). While we do not question Dr. [REDACTED] professional opinion, her assessment conveys the petitioner’s statements, during what appears to be a single interview many years after the precipitating event.

On appeal, the petitioner submits a psychological assessment identical to that submitted below, but with the addition, on both the new Spanish language original and the new English translation, dated May 27, 2014, of a December 9, 2013 “date of assessment” and a May 12, 2014 signature by Dr. [REDACTED]. As the content of the second assessment is identical to the first, it will not be separately addressed.

The petitioner also submits his third declaration, in which he recounts the events of November 9, 2004 much as he did in those submitted below. The petitioner adds that although the incident occurred more than nine years ago, he feels as though it was yesterday. He states that as a result, he has difficulty sleeping, dreams of being chased and beaten, has problems concentrating, and suffers from headaches, depression and short-

¹ The director also noted some inconsistencies in the record regarding the petitioner’s statement that he lost consciousness during the incident and an account contained in the emergency room report where the petitioner asserted that he “did not lose consciousness but was dazed.” The petitioner submits a declaration by his mother, [REDACTED] Ms. [REDACTED] states, regarding the events of November 9, 2004, that the petitioner “was momentarily unconscious” but when police arrived he was conscious and that is why police did not report that the beating caused him to faint. Ms [REDACTED] adds that the petitioner told her he had fainted because of the beating but she forgot to tell the doctor. We find the petitioner’s and his mother’s explanations for the discrepancies discussed to be reasonable.

term memory loss. The petitioner claims that if he is not admitted to the United States, he will be unable to get much needed treatments for his depression. He does not indicate why he has never sought such treatment before. The petitioner states that he is sorry for all of his arrests and convictions, has not been involved in gang activities since [REDACTED] and that since his [REDACTED] arrest, he has taken responsibility for his actions and is a more mature person today.²

We do not minimize what the petitioner experienced as the victim of a felonious assault by rival gang members; however, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. The petitioner provides a general account of the symptoms he is experiencing from the assault, but without the probative details necessary to demonstrate any permanent or serious harm to his appearance, health or physical or mental soundness. Similarly, the psychological evaluation provides only a list of the petitioner's symptoms or characteristics that he presented during his in-take interview (e.g., low self-esteem, variable humor), without causally connecting them to his victimization. Although Dr. [REDACTED] diagnoses the petitioner with PTSD, she provides a vague treatment plan and fails to discuss any predicted prognosis for the petitioner's mental health. Overall, the record does not support a finding that the petitioner meets subsection 101(a)(15)(U)(i)(I) of the Act, and we affirm the director's determination on this issue.

Inadmissibility

Section 212(d)(14) of the Act 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 petitioner bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 8 C.F.R. § 214.1(a)(3)(i).

For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 waiver in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As we do not have jurisdiction to review whether the director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The only issue that may come before us is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

² The petitioner also asserts that after his 2006 arrest, he only violated the terms of his probation once. However, this statement is contrary to the criminal court records which show that after being convicted on August [REDACTED] of felony possession/purchase cocaine base for sale, the petitioner admitted and was found by the court to have violated the terms of his probation on three separate occasions. On July 23, 2008, his probation was revoked, reinstated, and he was ordered to complete a drug treatment program. On May 6, 2009, the petitioner's probation was again revoked, reinstated, extended to February 2, 2010, and he was ordered to complete the drug treatment program ordered by his probation officer. On November 2, 2009, he was again admonished by the court, ordered to complete the drug abuse treatment program, and probation was otherwise continued on the same terms and conditions.

A full review of the record shows that the petitioner is inadmissible under sections 212(a)(2)(A)(i)(II) (controlled substance violation) and 212(a)(2)(C) (controlled substance trafficker) of the Act. The record shows that on August [REDACTED] when the petitioner was 18 years of age, he was convicted of Possession/Purchase of Cocaine Base for Sale, a felony, in violation of section 11351.5 of the California Health and Safety Code, for which he was sentenced to 180 days in county jail and three years of probation. Criminal court documents in the record support the petitioner's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance as a result of his conviction. In addition, the petitioner's conviction for violating Cal. H&S § 11351.5 is sufficient evidence to reasonably believe that he has been involved in illicit trafficking of a controlled substance, cocaine.³ Consequently, the petitioner is inadmissible under section 212(a)(2)(C) of the Act as an alien whom the Secretary of Homeland Security knows or has reason to believe is a controlled substance trafficker.

The petitioner is also inadmissible under sections 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(A)(ii) (aliens previously removed). The record shows that the petitioner entered the United States without inspection, admission or parole in early 2001 and did not depart until November 23, 2011 when he was removed. The unlawful presence provisions of the Act were triggered upon his departure. The petitioner accrued unlawful presence from March [REDACTED] (the date of his eighteenth birthday), to November 23, 2011, a period in excess of one year. Consequently, the petitioner is inadmissible under sections 212(a)(9)(B)(i)(II) for being unlawfully present in the United States for one year or more, and 212(a)(9)(A)(ii) for having been previously removed and seeking admission within ten years of his departure from the United States.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(I) (crime involving moral turpitude). However, the director did not specify the crime for which this inadmissibility was found and the petitioner's adult conviction does not constitute a crime involving moral turpitude. While the petitioner has a juvenile record including arrests for felony transport/sell narcotic/controlled substance on June [REDACTED] grand theft-auto on July [REDACTED] and felony transport/sell narcotic/controlled substance-to wit, cocaine on August [REDACTED] we do not consider juvenile offenses in determining inadmissibility. See Section 212(a)(2)(A)(ii)(I) of the Act. Therefore, although grand theft-auto may be a crime involving moral turpitude, we do not reach this determination and therefore, the petitioner is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The portion of the director's decision to the contrary will be withdrawn.

The director also found the petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. However, the record establishes that the petitioner was removed from the United States on November 23, 2011 and thus he is no longer present without admission or parole. Therefore, the petitioner is not inadmissible under section 212(a)(6)(A)(i) of the Act and the portion of the director's decision to the contrary will also be withdrawn.

³ CA H&S § 11351.5 states: "Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale cocaine base which is specified in paragraph (1) of subdivision (f) of Section 11054, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years."

Page 8

On appeal, the petitioner does not dispute that he is inadmissible to the United States on the stated grounds but asserts that his inadmissibility grounds should be waived and that he merits a favorable exercise of discretion. However, the director determined that the petitioner did not merit a favorable exercise of discretion and denied his Form I-192 application for a waiver of inadmissibility accordingly. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. *See* 8 C.F.R. § 212.17(b)(3).

Conclusion

Although the petitioner was helpful to the [REDACTED] Police Department in the investigation of a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, he has not demonstrated that he suffered substantial physical or mental abuse as a result of having been such a victim, as required by subsection 101(a)(15)(U)(i)(I) of the Act. In addition, the petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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.