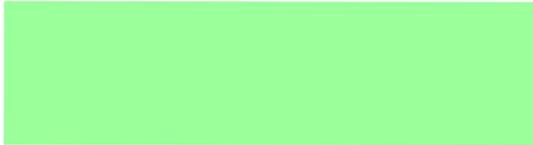




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 18 2015 Office: VERMONT SERVICE CENTER

FILE: [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:

SELF REPRESENTED

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 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 The director's decision will be withdrawn in part and affirmed in part. 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 did not establish that she was the victim of qualifying criminal activity, that she suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity, or that she has been helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submitted a short statement detailing her basis of appeal.

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 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;

* * *

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested[.]

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 initially entered the United States in January 1990 without inspection, admission or parole. On August 15, 2012, she was

removed from the United States and claims to have reentered in September 2012. She was removed again on an unknown date and claims to have reentered again on January 7, 2013 without inspection, admission or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on August 16, 2013. The director denied the Form I-918 U petition and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner states that she was a victim of domestic violence over the course of a three-year relationship with her ex-boyfriend.

Claimed Criminal Activity

In her declaration, the petitioner recounted that she began dating her ex-boyfriend in 2008 and the couple began residing together shortly after beginning their relationship. She stated that three months into the relationship, her ex-boyfriend began displaying an “abusive attitude” and would “hit [the petitioner] without any reason.” On March 22, 2012, the petitioner decided that she had endured enough abuse and decided to go to the police regarding her ex-boyfriend’s behavior. She stated on that date, her ex-boyfriend got angry with her and grabbed her arms while yelling at her. She stated that he also punched her on the right side of her forehead and otherwise beat her. She stated that her right arm was bruised as a result. Her declaration states that she went to get a restraining order against her ex-boyfriend, saw his car parked there, and was scared. She stated that she cries when she remembers the abuse perpetrated upon her by her ex-boyfriend.

The Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED] Police Department (certifying official), on June 18, 2013. 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 California Penal Code (CPC) § 273.5, domestic violence, 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 had separated from her boyfriend of three years, but that the ex-boyfriend came over in March to do some construction work. After the petitioner “insisted in talking to him about their relationship, [the ex-boyfriend] grabb[ed] the [petitioner] by the arms as their conversation escalated into an argument.” 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 suffered “bruising to arm and wrist.”

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, establishes that the petitioner was the victim of qualifying criminal activity and was helpful to law enforcement authorities in its investigation of the crime perpetrated against her; however, she remains statutorily ineligible for U nonimmigrant status for failure to establish that she suffered substantial physical or mental abuse resulting from the qualifying criminal activity.

Domestic Violence is a Qualifying Crime

The certifying official at Part 3.3 in the Form I-918 Supplement B indicated that he investigated or prosecuted the crime of “domestic violence.” The Original Crime Report states that the crime investigated is CPC § 273.5, “simple assault – domestic violence.” Under the California Penal Code, a person is guilty of a felony when: “(a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition . . .” Cal. Pen. Code § 273.5.

The crime of domestic violence is specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. 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.

Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On the law enforcement certification, the certifying official indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying domestic violence 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 director’s decision stated that the petitioner had not provided evidence to show that the petitioner’s abuser was arrested, charged and convicted of the crime of domestic violence nor had she submitted evidence to demonstrate that she obtained a protection order against her abuser.

De novo review shows that the director mischaracterized the relevant evidence. U nonimmigrant classification is based upon cooperation between a victim and a certifying agency investigating or prosecuting qualifying criminal activity. A victim must not only demonstrate her cooperation in an investigation or prosecution of qualifying criminal activity, but also establish that “since the initiation of cooperation, [the victim] has not refused or failed to provide information and assistance reasonably requested[.]” See Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. §§ 214.14(b)(3).

The evidence in the record indicates that the petitioner’s abuser was charged in connection with the petitioner’s complaint as the Form I-918 Supplement B contains a case number of [REDACTED] and states that the case status is completed with a misdemeanor indicated as the result of the court case (court docket [REDACTED]). The certifying official certified the petitioner’s helpfulness on the Form I-918 Supplement B, and there is no indication that the petitioner was requested to provide additional information and refused to provide any assistance to allow a

prosecution to move forward. The statute requires the investigation or prosecution of qualifying criminal activity; here the record contains evidence of an investigation into the qualifying criminal activity as well as a successful prosecution of the same. The preponderance of the relevant evidence of record demonstrates that the petitioner was helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act. The director's contrary determination is withdrawn.

Substantial Physical or Mental Abuse

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, 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 indicated that the petitioner suffered bruising to her arm and wrist. The petitioner's declaration states that her ex-boyfriend began displaying an "abusive attitude" three months into their relationship that began in 2008. She states that if the couple did not agree on a topic, her ex-boyfriend would hit her and yell at her to shut up. She stated that on March 22, 2012, she and her ex-boyfriend began to argue and he grabbed her by her arms and began to yell at her. He also struck her on the right side of her forehead during the encounter. She decided that she had suffered enough abuse and went to the police that day.

In her declaration, the petitioner stated that she suffers from "severe emotional trauma" resulting from domestic violence that included acts of physical, sexual and emotional abuse perpetrated by her ex-boyfriend. Factors that we consider when determining whether a petitioner has suffered substantial abuse include, but are not limited to, the severity of the harm that was suffered, the duration of the harm and the extent to which there is permanent or serious harm to a petitioner's health, appearance or mental or physical soundness. There is no evidence from either the petitioner or the certifying official that the domestic violence incident that was investigated resulted in the petitioner seeking medical treatment for any injuries, and although the petitioner stated that she suffered severe emotional trauma, her declaration provides no insight into how the investigated incident impacted her health or mental soundness or aggravated any pre-existing conditions. The petitioner's reference to past sexual abuse is not further explained in either the petitioner's declaration or in the record. A petitioner's general statement of suffering from severe emotional trauma will not suffice to demonstrate substantial abuse absent information about the certified criminal activity's impact on a petitioner's overall physical or mental health or soundness. We do not minimize the petitioner's victimization; however, as the record is presently constituted, the evidence fails to establish that she suffered resultant substantial physical or mental abuse as required by section 101(a)(15)(U)(i)(I) of the Act and as explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

The petitioner has established that she was the victim of a qualifying crime, namely domestic violence, and that she provided assistance to the law enforcement agency that investigated the crime. As a result, those portions of the director's decision are withdrawn. The petitioner remains ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), however, as the record does not establish that she suffered resultant substantial physical or mental abuse as required under subsection 101(a)(15)(U)(i)(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. Accordingly, the appeal will be dismissed.

ORDER: The director's March 24, 2014 decision is withdrawn in part and affirmed in part. The appeal is dismissed. The petition remains denied.