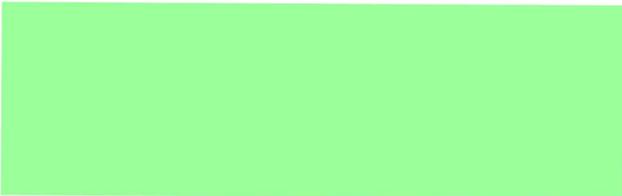


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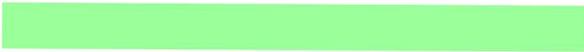
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



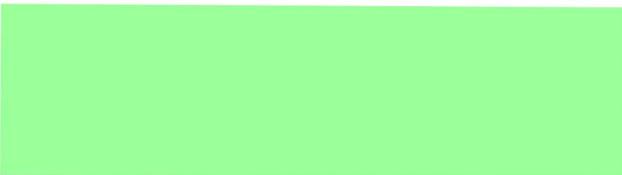
U.S. Citizenship
and Immigration
Services



Date: FEB 19 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 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 she had suffered substantial physical or mental abuse as a result of her victimization. On appeal, the petitioner submits a statement 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 Honduras who claims to have initially entered the United States in June, 1998, without inspection, admission or parole. The petitioner claims that she departed the United States in 2010, and reentered in August, 2011, 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 February 1, 2013. On June 24, 2013, the petitioner filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) for her grounds of inadmissibility. On November 27, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial or physical abuse as a result of the qualifying crime. 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 appealed the denial of the Form I-918 U petition. The petitioner states on appeal that although she suffered minor physical injuries during the domestic violence incident, she continues to suffer substantial mental abuse.

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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.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Assistant District Attorney, District Attorney's Office, [REDACTED] North Carolina (certifying official), on July 31, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official referred to North Carolina General Statutes (N.C.G.S.) § 14.33(c)(2), assault, 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 stated that the petitioner was hit in the leg and lower back. At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

In her declaration dated January 28, 2013, the petitioner stated that she grew up in poverty and was the victim of attempted rape by her uncle. When she was 18, she was raped by a neighbor, which resulted in her becoming pregnant. She moved in with the neighbor after he threatened to kill her, she gave birth to her son, and a year later, she had another child. The father of her children continued to rape and abuse her, so after the birth of her second child, the petitioner took her children to her parent's house and fled to the United States. When she came to the United States, she met a man in [REDACTED] and had another child; however, when the baby was a month old, her boyfriend beat her up and when she called the police, he fled. She then moved to North Carolina and started dating another man. One night when her boyfriend was drunk and "drugged," he came to her apartment and broke down the door to her bedroom. He grabbed her by the hair, told her he was going to kill her, pushed her against the wall, bent her fingers and broke five of her fingernails, and pushed her down the stairs. In her declaration submitted in response to the RFE, the petitioner stated that her abuser broke three of her fingers.¹ In her declaration submitted on appeal, the petitioner claims that she could not afford to receive domestic violence therapy immediately after the incident in 2007 because she was sending money to her children in Honduras. She explains that although she knew she needed therapy, she also had to financially provide for her children since her abuser was arrested and was not contributing to the household. She states that after the incident, she "suffered a lot of stress because [she] was left by [herself]," and she started having high blood pressure and nightmares. She also has scars on her head from the incident and she gets nervous when she hears "a man yelling at a woman." She claims that she is afraid of her abuser because he threatened to harm her children in Honduras, she is insecure, she has difficulty trusting people, and she is scared to start another relationship with someone.

In her letter dated May 20, 2013, [REDACTED] a counselor at [REDACTED] indicated that the petitioner successfully completed at least 12 domestic violence counseling sessions and she did not recommend "additional domestic violence services" for the petitioner. In a statement dated January 2, 2014, [REDACTED] Program Coordinator for [REDACTED] indicates that the petitioner first contacted their organization on January 29, 2013,

¹ We note that the incident report dated April 29, 2007, only indicates that the petitioner suffered bruises/scratches on her leg and back, and she was not treated for any injuries.

seeking domestic violence counseling services. The petitioner received a domestic violence psychosocial assessment and was recommended for the program based on “past abuse and controlling behaviors in three intimate partner relationships.” According to the petitioner, she “endured emotional abuse, physical abuse, threats, isolation, controlling behaviors, and intimidation” from her most recent abuser, and during the most severe domestic violence incident, the petitioner suffered “3 broken nails, bumps on her head, bruises, and bleeding on her arm.” [REDACTED] states that according to the petitioner, she has nightmares and is suffering symptoms of depression and post-traumatic stress disorder (PTSD).

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 claims that she is suffering symptoms of depression and PTSD, the Form I-918 Supplement B, the incident report, statements from the petitioner, and the mental health documents fail to probatively discuss any permanent 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 statement submitted on appeal indicates that she suffered a traumatic experience when she was assaulted, but she provided no further information in her statement regarding ongoing trauma. [REDACTED] did not make any diagnosis or findings regarding the petitioner’s mental state, but simply repeated the petitioner’s self-report of nightmares, depression, and PTSD. In addition, [REDACTED] does not recommend “additional domestic violence services” for the petitioner. Moreover, although the petitioner indicates that she was grabbed by the hair, pushed against the wall and down the stairs, and her fingers or fingernails were broken, this is inconsistent with the incident report which only mentions that the petitioner suffered bruises and scratches by being punched and she was not treated for any injuries. There is no explanation in the record for this inconsistency. 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

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.