



U.S. Citizenship
and Immigration
Services

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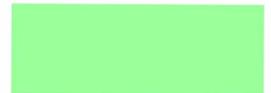


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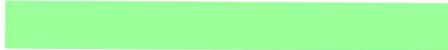
Office: VERMONT SERVICE CENTER

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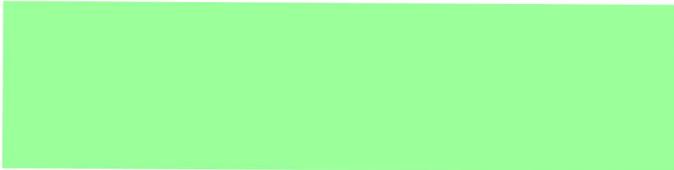
PETITIONER:



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; was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity; and because the petitioner is inadmissible to the United States and did not submit the required Form I-192, Advance Permission to Enter as a Nonimmigrant (Form I-192). On appeal, the petitioner submits 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[.]

Domestic Violence is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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[.]

* * *

(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."

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."

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii) This certification shall state

that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in 1991 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 March 29, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite substantial physical or mental abuse and helpfulness to law enforcement, and that the petitioner submit a Form I-192 to request a waiver of his grounds of inadmissibility along with court documents and final dispositions concerning his criminal arrests and convictions.¹ The petitioner responded with additional evidence, but did not file a Form I-192. The director found the evidence insufficient to establish the petitioner’s eligibility and denied the Form I-918 on October 9, 2013. On November 12, 2013, the petitioner timely appealed the denial of the Form I-918 U and on the same date, he filed a Form I-192.²

¹ The petitioner was notified in the RFE that he appears to be inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole); 212(a)(7)(B)(i)(I) (no valid passport); and 212(a)(2)(A)(i)(I) (crimes involving moral turpitude), requiring the submission of a Form I-192 and his criminal records.

² 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. Because the petitioner did not submit a Form I-192 in conjunction with his Form I-918 U Petition, the director was unable to fully consider whether the petitioner was inadmissible, whether his grounds of inadmissibility could be waived, and whether he warranted a favorable exercise of discretion related thereto. Consequently, and because the appeal of the Form I-918 petition is being dismissed on other substantive grounds, we will not consider the issue of inadmissibility or review the adjudicated Form I-192 submitted for the first time on appeal.

Analysis

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 and that he did not demonstrate his helpfulness to the certifying agency.

Qualifying Criminal Activity

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Sgt/Chief Staff, of the [REDACTED], California, Police Department (certifying official), on March 22, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. At Part 3.3, the certifying official did not list a statutory citation for the criminal activity investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the involvement of the petitioner, the certifying official did not provide any information. At Part 3.6, which asks the certifying official to provide a description of any known or documented injury to the victim, he indicated: "No injuries reported." The crime report noted that the petitioner "was slapped twice in the face by his girlfriend whom he shares a child with. She was cited and released. See report." In the police report, the responding officer stated that on April 19, 2007, the petitioner told him that when he gave his girlfriend less child support than anticipated, she slapped him twice across his left cheek with her right hand; the petitioner stated that he did not suffer any injuries and he did not need medical attention, an emergency protective order or counseling. The petitioner and his girlfriend apologized to each other and were eager to seek help in dealing with their differences; the petitioner had no visible marks, did not want to press charges, and his girlfriend was charged with misdemeanor domestic battery under California Penal Code section 243(e)(1).

Substantial Physical or Mental Abuse

The petitioner has not demonstrated that he suffered substantial physical or mental abuse resulting from the qualifying criminal activity. 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).

In an undated declaration submitted in response to the RFE, the petitioner recalled that he and his now former girlfriend knew each other since they were children, had a child together when he was 16 years old, and that she later began to doubt and accuse him of cheating on her. The petitioner went to her home on April 19, 2007, to drop off money. The petitioner stated that his mother accompanied him but he asked her to wait in the car; his then-girlfriend accused him of seeing another woman, threw unspecified items at him in the kitchen, pushed him away and started slapping him in the face and upper body, punched him, and scratched his arms with her nails. These statements are inconsistent with the Form I-918 Supplement B, the crime report, and the police report which indicate that the petitioner reported to the responding officer that

his girlfriend slapped him twice across his cheek and he suffered no injuries, especially given that the petitioner indicated in his declaration that he “told [the police] everything” when they arrived. The petitioner did not explain why he did not report to police any punches, slaps to the body, objects thrown at him or scratches to his arms, and if he had scratch marks on his arms, why they were not discovered by police. The petitioner claimed that as a result of abuse by his girlfriend, he has gravitated to similar relationships, is now in therapy years later, and suffers anxiety and depression.

The petitioner also submitted two psychological evaluations from [REDACTED]. In the first, Ms. [REDACTED] stated that the petitioner met with her for intake on July 25, 2013, that she was in the middle of the evaluation process, and that she expected to see him for six total sessions. In the second evaluation, Ms. [REDACTED] relayed from the petitioner that his former girlfriend struck his face on April 19, 2007; a subsequent girlfriend verbally abused him, threw unspecified objects at him, and struck him on November 30, 2012; and that he has a history of broken relationships. Ms. [REDACTED] diagnosed the petitioner with posttraumatic stress disorder/chronic (PTSD) and recommended that he continue with unspecified treatment. Ms. [REDACTED] briefly stated that the petitioner’s presenting problem was “related to” the April 2007 incident and a second incident involving a subsequent girlfriend in 2012. However, her assessments do not support that the petitioner suffered substantial physical or mental abuse as a result of being slapped twice on the cheek by his girlfriend in 2007.

On appeal, the petitioner submits an undated declaration in which he states that he did not press charges against his ex-girlfriend because he was afraid she would not allow him to see their daughter. He adds that there were “past incidents” during which she caused him unspecified harm that he did not report due to fear of unspecified repercussions.

We do not minimize what the petitioner experienced as the victim of a domestic violence incident in 2007 during which his then girlfriend slapped him twice on the face; however, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. At Part 3.6 of the Form I-918 Supplement B, which asks the certifying official to provide a description of any known or documented injury to the victim, he indicated: “No injuries reported.” The petitioner provides a general account of the symptoms he is experiencing as a result of 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 evaluations provide only a brief list of the petitioner’s symptoms (e.g., distressing dreams, flashbacks and sleep disturbance), none of which were alleged by the petitioner himself in his personal declarations. Ms. [REDACTED] did not confirm the petitioner’s claim that he suffers from anxiety and depression, and although she 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.

Helpfulness to a Certifying Agency

Based on the evidence in the record, we find no error in the director’s determination that the petitioner did not demonstrate that he 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 his 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).

At Part 3.5 of the Form I-918 Supplement B, which asks the certifying official to briefly describe the involvement of the petitioner, the certifying official did not provide any information. At Part 4.5, where the certifying official is asked to describe the helpfulness of the victim in the investigation of the qualifying domestic violence criminal activity, he wrote: “N/A.” In the police report, the responding police officer stated that the petitioner did not want to press charges or seek an emergency protective order. In her denial decision, the director stated that because the police report indicated that the petitioner did not want to press charges or seek a protection order, he was asked in an RFE to provide additional evidence of his helpfulness to law enforcement in the form of a statement from the certifying official indicating that the petitioner was helpful in the investigation of the qualifying crime. However, the petitioner did not provide the requested letter from the certifying official. Instead, the petitioner submitted a declaration in which he stated that he tried to be helpful to law enforcement and would be available if needed. As noted by the director in her denial decision, this statement is inconsistent with the police report and the law enforcement certification which show that the petitioner did not press charges and that his helpfulness to law enforcement was “not applicable.”

On appeal, the petitioner claims for the first time that he did not press charges against his former girlfriend because he feared she would not allow him to see his daughter. He states in a separate declaration, in which he primarily addresses his criminal record and other grounds of inadmissibility raised by the director, that he cooperated with police, was willing to testify against his former girlfriend, and if asked in the future, is fully willing to cooperate.

Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . . that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).” The petitioner does not address on appeal why the certifying official indicated that the petitioner’s helpfulness to law enforcement was “not applicable.” In addition, the petitioner has again failed to submit the requested statement by the certifying official, and has not provided a reasonable explanation for this evidentiary deficiency on appeal. The certifying official did not indicate that the petitioner was helpful in the investigation of the qualifying criminal activity. Therefore, the certifying official did not endorse the petitioner’s helpfulness such that he is able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. The petitioner’s Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act and, therefore, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

The petitioner has not demonstrated on appeal that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(I) of the Act, or that he was helpful in the investigation of such qualifying criminal activity under section 101(a)(15)(U)(i)(III) of the Act. In addition, the petitioner has not established that he is admissible to the

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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.