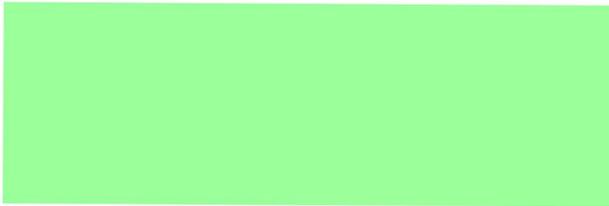




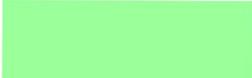
U.S. Citizenship
and Immigration
Services

(b)(6)

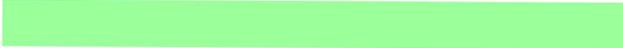


Date: FEB 24 2015

Office: VERMONT SERVICE CENTER

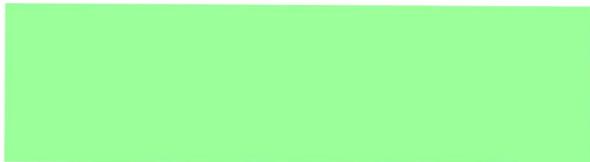
FILE: 

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 did not establish that she was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, or was helpful to a law enforcement official or other authorities investigating or prosecuting qualifying criminal activity. 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 --

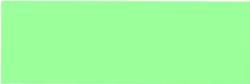
- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being 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 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[.]

* * *

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

* * *

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. . . .

* * *

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 in 2004 without being inspected, admitted, or paroled. 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 12, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. The director subsequently issued a Request for Evidence (RFE) in support of each ground of eligibility, as well as proof of a valid passport and a signed personal statement. The petitioner responded with additional evidence. The director found the evidence to be insufficient to establish the petitioner's eligibility and denied the Form I-918 U petition and Form I-192 accordingly. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner submits an updated Form I-918 Supplement B and a psychosocial evaluation.

Claimed Criminal Activity

The petitioner did not submit a statement with her initial Form I-918 U petition. The RFE specifically requested that the petitioner submit a signed, personal statement describing the events surrounding the alleged criminal activity. However, the petitioner did not submit a statement in response to the RFE or on appeal and, therefore, the record does not contain a description of the claimed criminal activity in the petitioner's own words.

The Form I-918 Supplement B that the petitioner initially submitted was signed by [REDACTED] Supervising Deputy District Attorney, [REDACTED] California, District Attorney's Office (certifying official) on November 20, 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 cited California Penal Code section 242-243(e) (battery) as the criminal activity that was investigated or prosecuted. The certifying official indicated that the criminal activity occurred on [REDACTED] 2006, in [REDACTED] California. Although at Parts 3.5, 3.6, and 4.5 he referenced an "attached report," there was no report submitted with the Form I-918 Supplement B.¹ In response to the RFE, the petitioner submitted an Incident Report from the [REDACTED] Police Department dated [REDACTED] 2006. According to the police report, the petitioner stated that on [REDACTED] 2006, her boyfriend "pushed her in the back with both hands," causing her to fall forward into a microwave oven stand on her abdomen. The petitioner explained that she was 15-19 weeks pregnant and because she had "some slight pain in her stomach," she went to the hospital for an examination. The police report further stated that no injuries were found and there was no injury to the unborn child. The report

¹ Parts 3.5, 3.6, and 4.5 request the certifying official to provide a description of the criminal activity being investigated and the involvement of the victim, any documented injuries to the victim, and the helpfulness of the victim, respectively.

indicated that the petitioner's boyfriend was arrested for domestic battery in violation of section 243(e)(1) of the California Penal Code. The record includes a copy of the hospital report which indicates that the date of injury was [REDACTED] 2006, and that the petitioner reported that her boyfriend "shoved her from behind, causing her to hit the corner of a table in the upper mid abdomen . . . in her apartment tonight."

On appeal, the petitioner submitted an updated Form I-918 Supplement B from the same certifying official. According to this updated Supplement B, 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 15-19 weeks pregnant at the time of the incident. She was at her home when her boyfriend . . . pushed her in the back with both hands. This caused her to fall forward, onto a microwave oven and stand. She struck the microwave with her body in the area just below her breasts. She had slight pain in her stomach after being pushed, and feared for the safety of her baby. She walked to a friend's house [and] asked for a ride to the hospital." 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 "complained of slight pain in her stomach (sic) after being pushed. Medical exam noted tenderness in the epigastric area, which was mild in intensity."

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 denying the petitioner's Form I-918 U petition.

Domestic Battery under California Law is a Qualifying Crime

The initial Form I-918 Supplement B and the updated Supplement B submitted on appeal listed section 243(e) of the California Penal Code, battery, as the crime the certifying agency investigated or prosecuted. According to the police report in the record, the petitioner's boyfriend was arrested for domestic battery in violation of section 243(e)(1) of the Penal Code. Section 243(e) of the California Penal Code states, in pertinent part:

(e)(1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.

CAL. PENAL CODE § 243(e)(1). Therefore, section 243(e)(1) specifically addresses battery of intimate partners, including spouses, cohabitants, and others in a dating relationship. Domestic violence is 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 domestic violence, a qualifying crime. Accordingly, the petitioner has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director's contrary determination.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

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 initial Supplement B and the updated Supplement B submitted on appeal, 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. According to the police report, although the petitioner asked that the detective not speak with her boyfriend about the incident and “did not want anything done other than a report prepared for documentation only, once the detective explained that he was required to speak with her boyfriend, she “was cooperative in reporting the incident” which led to the arrest of the petitioner’s boyfriend for domestic battery. Therefore, the preponderance of the relevant evidence in the record demonstrates that the petitioner has been 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

Nonetheless, the appeal cannot be sustained because the petitioner has not established that she has suffered substantial physical or mental abuse as a result of qualifying criminal activity. The record contains unresolved inconsistencies that have not been addressed by the petitioner and, as stated above, the petitioner has not submitted any statement for the record. For instance, the record is unclear when she was pushed by her boyfriend. According to both the initial and updated Form I-918 Supplement B, the date the criminal activity occurred was on [REDACTED] 2006. However, according to the hospital record, dated [REDACTED] 2006, the petitioner reported that the date of injury was [REDACTED] 2006, when her boyfriend “shoved her from behind, causing her to hit the corner of a table in the upper mid abdomen at [6:30] *in her apartment tonight.*” (Emphasis added). In addition, although the certifying official stated on the updated Supplement B submitted on appeal that the “[m]edical exam noted tenderness in the [petitioner’s] epigastric area, which was mild in intensity,” according to the hospital record, “there is no lower abdominal tenderness” and “there was no bruising to the upper abdomen.”

Furthermore, although a psychosocial evaluation by [REDACTED] a licensed clinical social worker, was submitted on appeal, it does not address this particular incident, but rather, contends that the petitioner’s ex-boyfriend verbally abused her, insulted her, prevented her from seeing her family and friends, destroyed her possessions, threatened her, withheld money, withheld food from her children, and sexually assaulted her for five months. There is no personal statement from the petitioner, however, describing any of her ex-boyfriend’s behavior or any physical or mental abuse suffered as a result of the qualifying activity in her own words. Additionally, the police report contradicts the psychosocial evaluation and stated that the petitioner was “shocked that this incident had occurred” considering that her boyfriend had “never been violent toward her” and “she was not punched, kicked, choked or assaulted in any other way besides being pushed.” The

hospital report similarly stated that the petitioner reported “this is the first and only time this has happened and she feels safe going home.” Without a signed statement from the petitioner providing probative and credible details of the certified crime and any resultant abuse, as well as other related domestic violence activities perpetrated against her by her ex-boyfriend, the record contains unresolved inconsistencies and insufficient evidence, when viewed in the totality, to establish that the petitioner suffered substantial physical or mental abuse as the result of her victimization as required under section 101(a)(15)(U)(i)(I) of the Act.² The preponderance of the relevant evidence does not establish that the petitioner suffered substantial physical and mental abuse under the factors described 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 and that she was helpful to a law enforcement official or other authorities investigating or prosecuting qualifying criminal activity. However, she has not established that she suffered substantial physical or mental abuse as a result of qualifying criminal activity. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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 appeal is dismissed. The petition remains denied.

² The petitioner also failed to comply with the regulation at 8 C.F.R. § 214.14(c)(2)(iii) regarding the submission of initial evidence at the time she filed her petition as required. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i).