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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

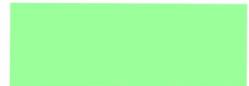


U.S. Citizenship
and Immigration
Services

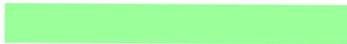


DATE: FEB 25 2015 Office: VERMONT SERVICE CENTER

FILE:

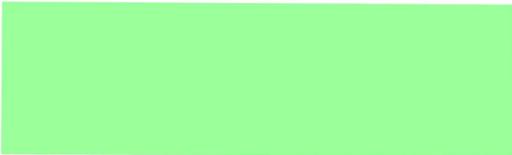


IN RE: Petitioner:



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 or 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".
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. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition for failure to establish that the petitioner has suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity. On appeal, the petitioner submits a brief, an updated affidavit, copies of previously submitted police records, and a copy of a previously submitted mental health evaluation.

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);

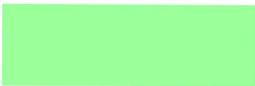
(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting 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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p) states:

(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 may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. 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).

As used in section 101(a)(15)(U)(i)(I) of the Act, the term *physical or mental* abuse is defined as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." 8 C.F.R. § 214.14(a)(8).

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

The regulation at 8 C.F.R. § 214.14 also provides, in pertinent part, the following guidelines regarding the eligibility requirements for U nonimmigrant classification:

(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[.]

We conduct appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or

concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1999 without inspection, admission, or parole. In June 2008, the petitioner was the victim of domestic violence. The petitioner filed the instant Form I-918 U petition on January 28, 2013. On November 8, 2013, the director issued a request for evidence (RFE) that the petitioner was a victim of a qualifying crime and had suffered substantial physical or mental abuse as a result. The petitioner responded to the RFE with a brief, an updated affidavit, copies of relevant criminal statutes, copies of the documentation he had submitted with his Form I-918 U petition, and a mental health evaluation. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly. The petitioner timely appealed the denial of the Form I-918 U petition.

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner suffered substantial abuse as a result of being a victim of qualifying criminal activity.

In her denial letter, the director found that the evidence was insufficient to show that the petitioner had suffered substantial physical or mental abuse as a result of the crime. On appeal, the petitioner asserts that he was injured physically and has suffered severe and ongoing mental health problems as a result of having been the victim of domestic violence perpetrated by his sister-in-law. He indicates that his sister-in-law threw a cell phone at him, causing bleeding on his nose and mouth. He notes that his sister-in-law was very aggressive and also hit the petitioner's wife and brother and broke the windshield of the petitioner's car before being restrained. He also states that his sister-in-law threatened to kill him and his brother if they called the police, and that she has sent threatening text messages in the years following the incident. He notes that his children and wife were present during the incident and that he worried about the effect on his children of witnessing violence in their home. The petitioner also claims that the depression, anxiety, and posttraumatic stress he has experienced since the incident qualify as substantial mental abuse resulting from the crime. He contends that the director held him to an inappropriate standard in noting that he did not seek medical attention for his injuries and did not receive mental health treatment until years after the incident. He also alleges that if he were a woman who had been harmed by a man in the way he was harmed by his sister-in-law, the director would have approved his petition.

In his affidavits, the petitioner indicates that his sister-in-law hit him, causing cuts on his lips. He also asserts that the incident caused him and his family to fear for their safety. He claims that he and his family moved to a new home due to concern that his sister-in-law would harm his wife and children

while he was at work. The petitioner also contends that he fears that his sister-in-law could arrange to have him killed if he were to return to Mexico.

In a mental health evaluation, [REDACTED] MA, LPC, indicates that the petitioner “is experiencing very serious trauma symptoms” due to the combination of being a domestic violence victim, experiencing threats to his family, having lived in poverty, having little education, and fearing returning to Mexico. She states that the petitioner is suffering numerous physical and mental difficulties stemming from this trauma and that his symptoms meet the criteria for Generalized Anxiety Disorder, Major Depressive Disorder, and Posttraumatic Stress Disorder. She recommends that he seek ongoing counseling.

Although the evidence demonstrates that the petitioner has been affected by the domestic violence perpetrated against him, the record does not support a finding that the physical abuse he suffered was substantial. As a result of being hit in the face with his sister-in-law’s cell phone, the petitioner sustained cuts on his nose and mouth. Although he correctly asserts that seeking medical attention is not a prerequisite for a finding of substantial abuse, the evidence in this case shows that the injuries were minor. The photographs and police reports completed immediately after the incident do not demonstrate serious injury, nor has the petitioner alleged that his physical injuries were severe or lasting. The Form I-918 Supplement B the petitioner submitted with his petition also fails to mention any injury to the petitioner. Furthermore, the petitioner’s accounts of the event indicate that his sister-in-law’s physical aggression toward him was limited to throwing her phone at him and resisting his efforts to restrain her. When viewed in light of the applicable regulatory factors, which require consideration of the nature, severity, and duration of the conduct and resulting injury, the harm against the petitioner does not meet the standard of substantial physical abuse. 8 C.F.R. § 214.14(b)(1).

Similarly, the record does not support a finding that the domestic violence caused the petitioner substantial mental abuse. The petitioner’s statements and the mental health evaluation indicate that he has experienced anxiety, depression, and fear for his safety and that of his family since the incident. The mental health evaluation also indicates that the petitioner is suffering from posttraumatic stress disorder. However, the regulatory factors as applied to this case demonstrate that the abuse does not rise to the level of “substantial.” The harm to the petitioner arose out of a single incident in which he received minor physical injuries and threats. The perpetrator’s conduct – throwing a cell phone at the petitioner, breaking his windshield, resisting restraint, and threatening him – while serious, was not particularly violent or severe, nor was it part of an ongoing pattern of abuse. Although the event caused the petitioner to fear his sister-in-law, he states that he and his family have not seen her since the incident. He also notes that the protection order he received against his sister-in-law increases his sense of security. Although he claims that he is fearful because his brother recently received threatening text messages from the sister-in-law, there is no evidence that the petitioner or his family have been in danger of actual harm from the sister-in-law since 2008. Although [REDACTED] notes in the mental health evaluation that the petitioner is experiencing symptoms of trauma, she lists several causes in addition to the domestic violence, including poverty, lack of education, and the possibility of returning

to Mexico. Furthermore, there is no evidence that the petitioner's mental health problems have prevented him from working, caring for his family, or meeting his other responsibilities.

Although the domestic violence perpetrated by the petitioner's sister-in-law clearly affected him, the evidence does not demonstrate that the incident caused substantial physical or mental abuse to the petitioner as contemplated by the regulation. 8 C.F.R. § 214.14(b)(1). Although the petitioner alleges that the finding would be different if he were a woman, we apply the regulatory factors regardless of the sex of the victim and there is no indication that the director's application of the factors was biased.

Furthermore, although not addressed by the director, the petitioner has failed to demonstrate that he has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity as required by section 101(a)(15)(U)(i)(III) of the Act.¹ The petitioner submitted with his U nonimmigrant petition a signed Form I-918 Supplement B (Supplement B) signed by [REDACTED] of the [REDACTED] Sheriff's Office. However, Sheriff [REDACTED] did not certify that the petitioner has been helpful; the entire Part 4 of the Supplement B, which relates to the helpfulness requirement, is blank. Certification of helpfulness on the Supplement B is a statutory requirement for demonstrating eligibility for U nonimmigrant status. Section 214(p) of the Act. As the petitioner has failed to submit a complete Supplement B which certifies his helpfulness, he cannot demonstrate eligibility for U nonimmigrant status.

Conclusion

As the petitioner has not established that he suffered substantial physical or mental abuse resulting from a qualifying crime or criminal activity, and that he was, is being, or is likely to be helpful to law enforcement, he is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).