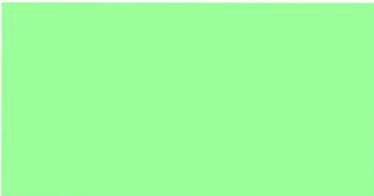


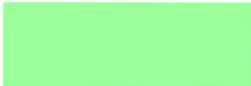


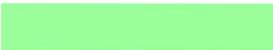
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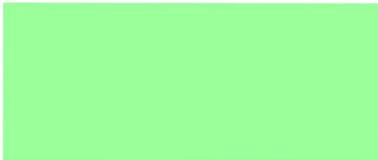
Date: FEB 27 2015

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 Petition for U Nonimmigrant Status (Form I-918 petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 because the petitioner did not establish that he was a victim of a qualifying criminal activity, and was therefore unable to establish that he suffered substantial physical or mental abuse as the result of qualifying criminal activity, that he possessed information regarding the qualifying activity, and that he had been helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. The director also determined that the petitioner is inadmissible to the United States. On appeal, the petitioner submits a brief and copies of previously submitted evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U) of the Act if:

(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);

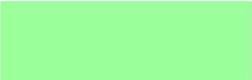
(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(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;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape;



torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in pertinent part:

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

* * *

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

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, a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

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).

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

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. 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, 8 U.S.C. § 1184(p)(4).

Facts and Procedural History

The petitioner is a citizen of Mexico. The petitioner claims that he last entered the United States without inspection, admission, or parole on June 27, 1999. On December 26, 2012, the petitioner filed the instant Form I-918 petition. The director subsequently issued a Request for Evidence (RFE) of the direct and proximate harm suffered by the petitioner as a bystander to qualifying criminal activity. The petitioner responded with a new statement from himself, statements from his friends and family members, a psychiatric evaluation, and a letter and medical records from [REDACTED]. The director determined that as the petitioner failed to establish that he was the victim of qualifying criminal activity, he therefore could also not meet the remaining statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Accordingly, the director denied the petition. The petitioner filed a timely appeal of the denial of the Form I-918 petition.

Analysis

In his October 31, 2012 and January 10, 2014 statements, the petitioner recounted that on June 14, 1991, he was at home with his partner when someone knocked on the front door of their home. His partner went to open the door and, although he was not in the same room as his partner, he heard an unknown man asking her questions before he heard two gunshots. Upon hearing the gunshots, the petitioner ran to his partner and saw that she was lying on the ground and spitting up blood. Although the perpetrator ran away, the petitioner indicated that he was a man who was known to him. While the petitioner held his partner in his arms, a neighbor called the police. Before they arrived, his partner had already passed away. The petitioner stated that the perpetrator was convicted of the murder and that he was helpful in his identification and arrest, and was willing to testify at court, but was not asked to do so. The petitioner credibly described that he saw a counselor a few times, and had not continued with the treatment because he was unwilling to take prescribed medicine, and lacked the money for counseling services. He stated that he still has nightmares, anxiety, and depression since the murder of his partner.

The Form I-918 Supplement B was signed by Sergeant [REDACTED], Office of the Chief, [REDACTED] Police Department, [REDACTED] Texas. At Part 3.1 on the Form I-918 Supplement B, the certifying official identified the crime as “Murder.” At Part 3.3, the certifying official stated that the crime investigated or prosecuted was section 19.02 of the Texas Penal Code (Tex. Penal Code) (murder). At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as the shooting of the petitioner’s fiancée. The certifying official affirmed that the petitioner identified the perpetrator of the murder and where to find him. He stated that the petitioner “remained helpful throughout the investigation.”

In his denial decision, the director determined that the petitioner had failed to meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act (victim of substantial physical or mental abuse, possession of information, helpfulness and jurisdiction over the criminal activity) because he was neither the spouse of the victim nor an individual who had suffered direct and proximate harm, as he was not “near [the victim] when she was shot by the perpetrator.” In this case, however, the preponderance of the evidence demonstrates that the petitioner was a victim of the qualifying crime, and has met the other requirements.

The record shows that the petitioner was a victim under the regulation at 8 C.F.R. § 214.14(a)(14) because he suffered direct and proximate harm as a bystander to a violent crime. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule’s definition of victim). The AG Guidelines clarify that “direct and proximate harm” means that “the harm must generally be a ‘but for’ consequence of the conduct that constitutes the crime” and that the “harm must have been a reasonably foreseeable result” of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: “In the absence of physical . . . harm, emotional

harm may be presumed in violent crime cases where the individual was actually present during a crime of violence.” *Id.* at 9. The evidence shows that the petitioner was present at the time of the murder and witnessed his partner’s death after she was shot in their home. The Form I-918 Supplement B and other relevant evidence confirms that murder, a qualifying crime, was investigated and prosecuted and that the petitioner possessed information about the murder and was helpful to the police in the investigation and prosecution of the qualifying crime. The petitioner has, therefore, established that he is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Furthermore, [REDACTED], a licensed clinical social worker with [REDACTED] diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood. [REDACTED] a psychiatric mental health nurse practitioner, with [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder (PTSD) based upon a psychiatric diagnostic interview examination. Specifically, Ms. [REDACTED] indicated that the petitioner has had a history of depression since he witnessed the murder of his girlfriend. Furthermore, Dr. [REDACTED] diagnosed the petitioner with PTSD (Chronic). Dr. [REDACTED] explained how the petitioner’s mental health was impacted by his witnessing the murder. The preponderance of the evidence shows that the petitioner has suffered substantial mental abuse as a result of being the victim of a qualifying crime, as required by subsection 101(a)(15)(U)(i) of the Act, and the director’s contrary decision is withdrawn.

We also withdraw the director’s determination that the petitioner did not possess information of the qualifying criminal activity and was not helpful to law enforcement authorities, as the certifying official indicated on the Form I-918 Supplement B that these eligibility criteria were met.

Inadmissibility

We do not have jurisdiction to review whether the director properly denied the Form I-192 application; the only issue before us is whether the director was correct in finding the petitioner inadmissible. The record indicates that the petitioner is inadmissible under the following subsections of the Act: 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude (assault-bodily injury)¹, 212(a)(6)(E)(i) for alien smuggling, 212(a)(9)(C)(i)(I) for unlawful presence exceeding one year, 212(a)(9)(C)(i)(II) for having been previously ordered removed and having reentered without admission, and 212(a)(6)(A)(i) for being present in the United States without admission or parole. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant

¹ Although the director found that the petitioner was convicted of failure to stop and render aid, the case inquiry printout provided by the petitioner indicates the disposition of the crime as “CASE REJECTED.” In consequence, the petitioner was not convicted of failure to stop and render aid.

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NON-PRECEDENT DECISION

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status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 after having made a substantive decision on the merits of the Form I-192. *See Decision of the Director on Application for Advance Permission to Enter as an Immigrant*, dated February 24, 2014. A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I), 212(a)(6)(E)(i), 212(a)(9)(C)(i)(I), 212(a)(9)(C)(i)(II), and 212(a)(6)(A)(i) of the Act. Counsel does not contest inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determination. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).

Conclusion

The petitioner has established that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and that he meets the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. However, the petitioner is inadmissible to the United States and his grounds of inadmissibility have not been waived. The petitioner is consequently ineligible for U nonimmigrant classification 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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.