(b)(6)

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: JAN 0 7 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,

for 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, concluding that the petitioner had not established that he had suffered substantial physical or mental abuse as a result of qualifying criminal activity and noting that the petitioner appeared inadmissible under section 212(a)(6)(E) for smuggling.[1] On appeal, the petitioner submits an updated statement, a brief and additional evidence, asserting that he suffered substantial psychological and physical harm as a result of the qualifying criminal activity.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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 --
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> (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);
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> (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: . . . domestic violence; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

[1] We do not reach the issue of inadmissibility under section 212(a)(6)(E) of the Act as the petition is deniable on other grounds.

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; . . .
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> * * *

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 last entered the United States in 2003 without inspection, admission or parole. On September 7, 2011, the petitioner was issued a Notice to Appear, placing him into removal proceedings which remain pending. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), on April 1, 2013. On December 11, 2013, the director issued a Request for Evidence (RFE), including, among other things, evidence establishing that the petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity and clarification from the petitioner regarding a 2003 incident report indicating that the petitioner had engaged in smuggling people across the U.S./Mexico border. The petitioner responded to the RFE with updated statements, a

letter from his counselor, Rev , and other evidence. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on April 15, 2014. The petitioner timely appealed the denial of the Form I-918 U petition.

Claimed Criminal Activity

The petitioner, in his personal statement, indicated that he was a victim of domestic violence on September 6, 2011, at the hands of his former girlfriend and the mother of his two daughters. On that date, the petitioner stated that his ex-girlfriend, D-C-,[2] came to his house while he was working on his car outside. D-C- yelled at the petitioner demanding money. She had been calling and texting the petitioner, demanding money and threatening to not let him see their daughters. They had previously agreed that he would give D-C- money twice a month on set dates and he told her that he would give her the money on those dates. The petitioner indicated that he tried to go into his house but D-C- blocked him. When he told her again that he would not give her the money, she hit him on his shoulder and his face. The petitioner stated that he raised his hand to hit her back but stopped himself. D-C- continued yelling and would not let him get into his car to leave. She told him that she would not leave until he gave her the money so he walked to a convenience store nearby. About 10 to 15 minutes later, the petitioner called the police after learning from his friend that D-C- was still at his home. When the police arrived, they arrested D-C-, but also contacted immigration officials because D-C- told them that the petitioner had no legal status in the United States. Immigration officials arrived to take the petitioner into custody and placed him into removal proceedings. The petitioner stated that he was handcuffed for several hours, causing his shoulder to hurt where D-C- had hit him. The petitioner reported feeling impotent and hopeless after the incident where D-C- hit him.

The Form I-918 Supplement B that the petitioner submitted was signed on February by Supervisor, Domestic Violence Unit, County Attorney's Office, Tucson, Arizona (certifying official). The certifying official checked the box for "domestic violence" at Part 3.1 as the criminal activity of which the petitioner was a victim. In Part 3.3, the certifying official cited sections 13-3601 and 13-1203 of the Arizona Statutes Annotated, which relate to the offenses of domestic violence and assault, as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official stated that the petitioner was slapped one time on the cheek by his ex-girlfriend who was upset because the petitioner had refused to give him money for the child they have together. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, she indicates that the responding officers observed no red marks or injuries on the petitioner.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the beneficiary's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

[2] Name withheld to protect the individual's identity.

The record does not support the petitioner's assertion that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

In his statement, dated March 4, 2013, the petitioner recounted the circumstances of the domestic violence incident involving his ex-girlfriend on September 6, 2011. He stated that the incident left him depressed and angry. In a subsequent statement, dated January 21, 2014, the petitioner discussed feeling suicidal and worrying over the unsanitary conditions his daughters were living in with his ex-girlfriend. He indicated that he felt useless and hopeless because the police arrested him on the day of the incident, even though he had been the victim of the criminal activity. The petitioner stated that his former girlfriend continued to use his daughters for ransom to get money from him after this incident until someone reported her to Child Protective Services. He reported that he has now been awarded full custody of his daughters and that his emotional health has improved as a result of counseling.

The record also contains a letter, dated January 12, 2014, from the petitioner's counselor, Rev. who stated that the petitioner received counseling services from March 8, 2013, to June 25, 2013, to address the latter's: (1) emotional distress caused by his former girlfriend with whom he reported abuse; (2) depression resulting from a pervasive feeling of helplessness; and (3) excessive anxiety triggered by confusion about the direction of his life and the well-being of his children. Rev. indicated that the petitioner reported suffering depressive symptoms after the domestic violence incident with his ex-girlfriend and that his case was closed on June 25, 2013, after five sessions as the petitioner reported improvement in his feelings.

The certifying official stated in the Form I-918 Supplement B that during the 2011 incident, the petitioner was slapped across the cheek once by his ex-girlfriend when he refused to give her money and that no marks or injuries were observed on the petitioner as a result. The record also contains a police report which indicates the petitioner's former girlfriend pushed him the chest and slapped him on the face once. It confirmed that the officers on the scene did not observe any injuries on the petitioner and that the petitioner did not report being injured.

Upon review of the record in its entirety, we find that the petitioner has failed to demonstrate that the injuries he sustained as a result of domestic violence rise to the level of substantial physical or mental abuse. The petitioner was slapped once and pushed in the chest during the incident. Although he references feeling pain in his shoulder where he was hit, the police record states that he reported being pushed in the chest and his statement indicates that the pain was the result of his hands being handcuffed behind him for several hours in the same position. There is no evidence in the record that the petitioner suffered ongoing or serious pain or injury as a result of being pushed or hit in the face or body by his former girlfriend. Similarly, although the petitioner reports feeling impotent, depressed and suicidal after this incident, the record lacks probative evidence to support such an assertion. Specifically, the record does not support the conclusion that the referenced domestic violence incident caused the petitioner's mental health decline or that such decline was serious or lasting. Rev. stated that the petitioner reported other factors, aside from the poor relations he had with the mother of his children, as contributing to the mental health symptoms he suffered. He further indicated that the petitioner went to five counseling sessions total during a period of approximately three months, before reporting an improvement in his mental state and discontinuing with counseling entirely. On appeal, the petitioner also notes that he suffered substantial harm because he was

detained in immigration custody following the 2011 incident, was placed into removal proceedings and was defrauded by an individual impersonating an attorney. We note that the detention and placement into removal proceedings stem from his unlawful status and is not harm resulting from the qualifying crime of domestic violence. Further, the petitioner acknowledges himself that he is in a better place and following his counseling sessions, he no longer has the feelings of anger, anxiety and depression he had previously felt following his detention. Based on the record, the petitioner has not shown any permanent or serious harm resulting from the qualifying criminal activity. Accordingly, the record is insufficient to support a finding that the petitioner suffered physical or mental that was substantial under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1).

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. Accordingly, the appeal will be dismissed.

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