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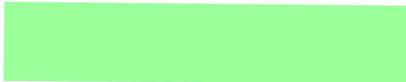
U.S. Citizenship  
and Immigration  
Services



Date: **JAN 15 2015**

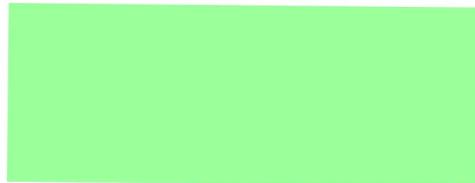
Office: VERMONT SERVICE CENTER

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.

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 The director's decision will be withdrawn and the matter returned for entry of a new decision.

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 for the petitioner's failure to establish that he suffered substantial physical or mental abuse as a result of the qualifying felonious assault offense committed against him.

*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[.]

Felonious assault 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 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, 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 initially entered the United States on September 12, 2003, without inspection, admission 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 11, 2013. On the same day, the petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On November 22, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of his victimization, and for evidence in support of his Form I-192 waiver application. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The

Page 4

director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts, in part, that as a victim of felonious assault, he suffered substantial physical injuries during the attack and he continues to suffer from chronic post-traumatic stress disorder (PTSD).

#### *Claimed Criminal Activity*

In his declaration, the petitioner recounted that one night in a bar, he and his partner were attacked by a “male cross dresser.” The cross dresser and several of her friends followed the petitioner and his partner into the bathroom where she began yelling at them. She then took off her shoe, pulled a knife from the heel, and started hitting the petitioner and his partner with her shoe. When the petitioner’s partner began bleeding, the cross dresser and her friends ran out the back entrance to the bar. When the police arrived, the petitioner gave a statement and he and his partner were transported to the hospital. Approximately ten months later, the cross dresser was arrested after attacking another couple.

The Form I-918 Supplement B that the petitioner submitted was signed by Judge [REDACTED] Judicial District Court, [REDACTED], Colorado (certifying official), on December 20, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official refers to Colorado Revised Statutes (C.R.S.) § 18-3-203, assault in the second degree, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that according to the police report, the petitioner and his partner were assaulted by the suspect, the suspect struck the petitioner “on the head with a high heel that was believed to conceal a small knife or blade,” and the petitioner “suffered injuries to his right forehead, the left side of his head, and the upper left portion of his head next to his hairline.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that according to the police report, the petitioner “had visible marks on his forehead that had swollen into a bump,” he had “bleeding injuries to his right forehead, the left side of his head, and the upper left portion of his head next to his hairline,” and he “suffered pain and fear of retaliation as a result of the assault.”

#### *Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director’s decision to deny the petitioner’s Form I-918 U petition.

#### Substantial Physical or Mental Abuse

The petitioner submitted a statement describing the impact of the assault on his mental and physical health and the facts of his victimization during the incident on September [REDACTED]. In his statement, the petitioner states that after he and his partner were assaulted by the cross dresser, they were taken to the hospital, his injuries were examined, and because of the stress, he was given intravenous fluids

to help lower his blood pressure. The record contains evidence of the petitioner's hospital visit on September [REDACTED] and photographs of his injuries. The emergency department report indicates that the petitioner was struck multiple times in the face and scalp with a stiletto that contained a hidden knife in the heel, he was treated for lacerations and given intravenous fluids. The petitioner claims that he is now afraid to go into a restroom alone and that he and his partner had to move because they were afraid that the suspect would retaliate against them.

In a mental health evaluation dated February 6, 2014, Ms. [REDACTED], a licensed professional counselor, indicates that the petitioner has symptoms of anxiety and trauma related to the assault in September [REDACTED] his victimization as a child in Mexico, and an arrest in 2006. She states that according to the petitioner, when he was growing up in Mexico, he was teased and bullied because of his "feminine traits and homosexual nature," and was even threatened with rape by a man. Ms. [REDACTED] explains that when the petitioner was recounting the September [REDACTED] incident, he started crying, wringing his hands, and had difficulty breathing. She states that the petitioner and his partner (now his husband) have not returned to the bar where the incident occurred, they rarely go out, and he still fears for their safety on a daily basis. She diagnoses the petitioner with chronic PTSD as a result of the assault that occurred in September [REDACTED] and recommends that he continue psychotherapy.

On appeal, the petitioner claims that the director did not properly weigh the mental health evaluation in her decision to deny the Form I-918 U petition, and his previously submitted evidence is sufficient to establish that he suffered substantial physical or mental abuse as a result of the qualifying crime. The evidence shows that the petitioner was attacked with a deadly weapon which caused significant injuries to his head requiring suturing, and although the physical injuries occurred over four years ago, the mental health documents show that the petitioner has suffered serious harm to his mental soundness as demonstrated by his diagnosis of chronic PTSD. In addition, the mental health evaluation shows that the criminal activity perpetrated against the petitioner aggravated his pre-existing conditions related to the trauma he suffered as a child and during his arrest in 2006. A preponderance of the relevant evidence demonstrates that the petitioner suffered substantial mental abuse as a result of the certified criminal activity. The evidence in the record, including the incident report, medical and mental health documents, and the statement from the petitioner provide probative and credible details of the certified crime, as well as the nature and duration of the petitioner's resulting injuries to his physical and mental soundness. *See* 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of pre-existing conditions). The totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

#### Admissibility

Although the petitioner has established his statutory eligibility for U nonimmigrant classification, the petition may not be approved because he remains inadmissible to the United States and his waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition,

and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. 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 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 in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated April 11, 2014. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will return the matter to the director for reconsideration of the Form I-192.

*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 been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and his waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

**ORDER:** The director's April 11, 2014, decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.