



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUL 13 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.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), as an alien victim of certain qualifying criminal activity. On July 17, 2014, the director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). In the decision on the Form I-918 U petition, the director stated that the petitioner did not establish she had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. On appeal, the petitioner submits a brief and 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;

* * *

(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: . . . witness tampering; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

The term “[p]hysical 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.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial

physical or mental abuse, United States Citizenship and Immigration Services (USCIS) will assess 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[.]

8 C.F.R. § 214.14(b)(1).

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 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 June 2004 without admission, inspection, or parole. With her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on June 10, 2013. On February 7, 2014, the director issued a Request for Evidence (RFE) that the petitioner establish that she suffered substantial abuse as a result of the certified criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility for U nonimmigrant status, and the director consequently denied the Form I-918 U petition and the accompanying Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner states that she did not suffer physical abuse, but suffered “profound mental abuse” as a result of her abuser’s actions, including an intensification of her pre-existing depression and anxiety.

Claimed Criminal Activity

In her May 21, 2013 declaration, the petitioner recounted that she was attacked by her ex-husband on [REDACTED] 2012.¹ The petitioner and her ex-husband hosted a party that went into the early hours of [REDACTED] 2012. The petitioner stated that, during that party, she spoke with a man who identified himself as her cousin. When the petitioner’s ex-husband saw her talking to a man he did not know, he got angry, threw a plate of hot food on her lap, yelled at her, and choked her in front of three party guests. She stated that her ex-husband stopped choking her when she told him that she would report him to the police. Her ex-husband went into the house and locked her out for the remainder of the night. The petitioner made a police report about the incident and obtained a restraining order against her ex-husband. The petitioner further explained that her ex-husband had been aggressive before, including after a co-worker’s wedding when he yelled at her for speaking with another man, pulled her hair, shoved her, and choked her when they returned home until her mother intervened. The petitioner states that she has bad memories of being married to her ex-husband and does not think that she will ever be able to have a normal relationship as a result of his actions. In her affidavit dated September 3, 2014, the petitioner stated that she lived in fear constantly after her ex-husband attacked her and that she began exhibiting symptoms of post-traumatic stress disorder, depression, and anxiety including bad nightmares.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED], a detective with the [REDACTED] Oregon Sheriff’s Office (certifying official), on January 7, 2013. Detective [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence and strangulation. In Part 3.3, Detective [REDACTED] referred to section 163.160 (assault in the fourth degree) and 163.187 (strangulation) of the Oregon Revised Statutes as the criminal activity that was investigated or prosecuted. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, Detective [REDACTED] indicated that the petitioner had been strangled which left marks and abrasions on her neck.

Analysis

We review these proceedings *de novo*. Based upon the evidence, we withdraw the director’s determination that the petitioner did not suffer substantial physical or mental abuse and find that she has satisfied section 101(a)(15)(U)(i)(I) of the Act.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, the

¹ The petitioner and her husband divorced on [REDACTED], 2013, and he will be referred to herein as the petitioner’s ex-husband.

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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, Detective [REDACTED] indicated that the petitioner had marks and abrasions on her neck as a result of the attack by her ex-husband. The police reports accompanying the Form I-918 Supplement B also indicated that the petitioner had an abrasion and a red mark on her neck. The police reports mentioned nothing about the petitioner's mental state. On appeal, the petitioner stated that she did not suffer "severe" physical abuse, but stated that the mental injury qualified her for U nonimmigrant visa status.

The petitioner also submitted a May 13, 2013 letter from [REDACTED], MA, who stated that he saw the petitioner as a mental health counselor in 2010 and again in 2012. He stated that the petitioner experienced emotional and sexual abuse at the hands of her first husband and that she struggled with feelings of inadequacy and self-worth as a result of that relationship. Mr. [REDACTED] stated that the petitioner suffered physical abuse at the hands of her ex-husband, the perpetrator of the qualifying criminal activity in this case, and that the petitioner was traumatized by the public nature of the physical abuse. He stated that the petitioner suffered from anxiety, nightmares, and intrusive thoughts as a result of the abuse by her ex-husband.

The petitioner also submitted an assessment completed by [REDACTED] a licensed professional counselor on March 3, 2014. Ms. [REDACTED] stated that the petitioner suffered from some symptoms of posttraumatic stress disorder (PTSD) and a Major Depressive Episode following the abuse at the hands of her ex-husband and those feelings of sadness and irritability continue to affect the petitioner. Ms. [REDACTED] indicates that the petitioner's sense of self efficacy and self-esteem was affected by the domestic violence to which she was subjected and that the petitioner needs a "stable environment that would support her in regaining a sense of security and self-confidence" and that requiring the petitioner to return to Mexico would likely aggravate her PTSD and depression as the petitioner relayed that she does not think Mexico is a safe place to live. Ms. [REDACTED] further noted that the petitioner was experiencing stress due to her immigration status, unemployment, and financial issues. She stated that the petitioner "gets upset easily, cries 2 or 3 times per week, feels frustrated because she does not have the means to have her own place, worries about the future, and has difficulty trusting others."

Although the petitioner stated on appeal that she did not suffer severe physical abuse, the evidence in the record indicates years of physical and mental abuse perpetrated by her ex-husband. In her May 21, 2013 declaration, the petitioner stated that her ex-husband "had been aggressive with [her]" previously, including after at a friend's wedding when the petitioner said he pulled her hair and yelled at her and later choked her until her mother told him to stop. The petitioner, in the same declaration, stated that her ex-husband was "violent" with her. In addition, the petitioner indicates that she was troubled more by the public nature of her ex-husband's outbursts and actions than any physical harm he inflicted.

In her declaration dated May 1, 2014, the petitioner recounted the details of the [REDACTED] 2012 attack in front of her friends and also stated that she was afraid that her ex-husband would be released from custody and come back to kill her. She stated that he had access to guns and he had said previously that, if she ever had him arrested he would kill her, and she was afraid that he would act on this threat. The petitioner stated that, as a result, she tried to reduce the risk that her ex-husband would harm her by staying with her sister or having other people in the house. She stated that she began having nightmares and could not sleep. She said her ex-husband's treatment of her also made her afraid that all men would treat her the same way and she had trouble trusting men. She stated that she feels hopeless about her life and her situation and that her pre-existing anxiety and depression have worsened.

The petitioner's May 21, 2013, May 1, 2014, and September 3, 2014 declarations provide probative statements not only regarding the victimization that resulted in her ex-husband's arrest and the court issuing a protective order against him but also other incidents of physical violence and emotional abuse perpetrated by her ex-husband prior to 2012. In addition, the certifying official's account of the injuries on the Form I-918 Supplement B and in the police records corroborate the petitioner's account of being strangled on [REDACTED] 2012. The petitioner described her depression and anxiety and feelings of hopelessness as a result of abusive episodes between her and her ex-husband as well as the father of her children, which included death threats, strangulation, verbal harassment, and other violent actions. The severity of the petitioner's ex-husband's conduct as described in the record amounts to substantial physical and mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1). The preponderance of the evidence demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of domestic violence, as required by section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her 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. 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).

In this case, the director determined that the petitioner was inadmissible under the following subsections of section 212(a) of the Act: (6)(A)(i)(present without admission or parole); (6)(C)(ii) (false claim to U.S. citizenship); (9)(B)(i)(I) (unlawful presence for over a year); and

(9)(C)(i)(II) (unlawful presence after previous immigration violation). The director denied the Form I-192 waiver application, without analysis, solely on the basis of the denial of the Form I-918 U petition. Because the petitioner has overcome the basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

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 her 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 July 17, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application 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.