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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JUN 03 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:  
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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 appeal will be dismissed.

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 because the petitioner failed to establish that he had suffered substantial physical or mental abuse as a result of his victimization. On appeal, the petitioner submits a brief.

*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 and attempted murder are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I) of the Act, 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 in 1987, 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 August 15, 2012. On the same day, the petitioner filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) in order to waive his grounds of inadmissibility. On October 18, 2013, the director issued two Requests for Evidence (RFE) that the petitioner suffered substantial mental or physical abuse as a result of the qualifying crime, and requested an updated Form I-918 Supplement B, and evidence in support of his Form I-192 waiver application. The petitioner responded to the RFE with additional evidence and an updated Form I-918 Supplement B. On March 3, 2014, the director issued a Notice of Intent to Deny (NOID), requesting evidence of the certified crime and additional evidence of substantial physical or mental abuse suffered by the petitioner as a result of qualifying criminal activity. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner appealed the denial of the Form I-918 U petition.

The petitioner states on appeal that he suffered substantial physical and mental abuse as a result of qualifying criminal activity. He was “deeply affected by the qualifying criminal activity,” and it has “triggered his diabetes and increased need for medical treatment and medication for his diabetes condition.” Additionally, he has been diagnosed with post-traumatic stress disorder (PTSD) and major depressive disorder.

### *Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director’s decision to deny the petitioner’s Form I-918 U petition.

The first Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED] California, Police Department (certifying official), on February 6, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as attempted murder. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 664/187, attempted homicide, 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 stated that after the petitioner’s daughter broke-up with her ex-boyfriend, he “repeatedly threatened to kill her,” and on [REDACTED] 2000, “the suspect attempted to burn down [the petitioner’s family’s] house by setting their van on fire in the attached carport. He also threw a rock into a window in the residence.” At Part 3.6, the certifying official did not indicate any known or documented injury to the petitioner.

The second Form I-918 Supplement B that the petitioner submitted was signed by the same certifying official as the first Form I-918 Supplement B and dated November 18, 2013. The certifying official listed the criminal activities of which the petitioner was a victim at Part 3.1 as felonious assault and attempted murder. The same information is listed at Parts 3.3 and 3.5 as in the first Form I-918 Supplement B, but at Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated “see attached police report”; however, the record does not contain any police records or court documents regarding the certified crime.

In his statement submitted in support of the Form I-918 U petition, the petitioner recounted that on [REDACTED] 2000, his daughter’s ex-boyfriend threatened to kill the petitioner’s family. When his daughter called the police to file a report, the police told her to get a restraining order. The next morning, the petitioner’s daughter woke up the petitioner saying that someone had thrown a rock through her window. The petitioner’s son went outside and saw that their van was on fire. Everyone evacuated the house and the petitioner attempted to put out the fire with his garden hose. The petitioner’s daughter called the police and they arrested the suspect. The suspect went to jail and when he was released in 2003, the petitioner heard he moved to Louisiana.

In his statement submitted in response to the NOID, the petitioner again described the incident when his van was set on fire by the suspect. He added that his daughter and the suspect were in an abusive relationship, and he was worried about his daughter’s safety after they broke up. The petitioner also recounted that when the suspect set their vehicle on fire, the petitioner told the police about the threats and incidents involving the suspect. The police asked the petitioner to identify the suspect and he answered all of the police’s

questions. After a couple of weeks, the suspect started calling and writing the petitioner from jail to apologize. The petitioner claims that he and his family have not “been the same” since their problems with the suspect. He states he has not been able to “work properly due to [their] van being burned [which] prevented [them] to relocate”; he is always worried about the suspect harming them again; he has gotten into “financial trouble” which has added to his stress; he has lost motivation; his family is distant from each other; and the suspect “crushed [the petitioner’s] family emotionally, took away [their] peace of mind and created a wall between all of [them].” The petitioner also claims that as a result of the stress, he has developed diabetes which has caused loss in his muscle mass and loss of vision in his left eye.

In her 2012 psychosocial evaluation, Ms. [REDACTED] a clinical therapist, diagnosed the petitioner with Post-Traumatic Stress Disorder (PTSD) and anxiety disorder. According to the petitioner, he fears retaliation by the suspect, he has flashbacks of the incident, and he feels depressed and confused but he had no history of depression or mental illness before this incident. He stated that although the incident occurred 10 years ago, it was “very traumatic for him” and he thought he was “going to die.” Ms. [REDACTED] stated that the petitioner was “experiencing a delayed onset of post traumatic stress disorder.” She also indicated that the petitioner had problems with his “primary support system,” “immigration status,” “access of health care services,” and “social isolation.” Ms. [REDACTED] recommended that the petitioner continue with “current outpatient treatment [which] meets the level of care required for these conditions.” In her 2014 updated psychosocial evaluation, Ms. [REDACTED] states that the petitioner still presents with symptoms of anxiety and depression related to the 2000 crime. According to the petitioner, he has “moments of intense fear for his safety and the safety of his family” and his life has changed since the crime; he is argumentative, over protective, and hyper-vigilant. Ms. [REDACTED] recommends that he continue to receive outpatient treatment, and also notes that since the suspect was released from jail in 2003, he has had no contact with the petitioner or his family.

Factors relevant to a determination of substantial mental or physical abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. *See* 8 C.F.R. § 214.14(b)(1).

The two Forms I-918 Supplement B do not contain any statements from the certifying agency about known or documented injuries to the petitioner resulting from the criminal activity to establish the severity of the harm. The petitioner’s statement contains generalized assertions about the impact of the crime on him during the past fifteen years and he does not sufficiently connect his diabetes diagnosis to his victimization such that we can conclude that the crime resulted in permanent or serious harm to his appearance, health, or physical or mental soundness. Ms. [REDACTED] PTSD and generalized anxiety diagnoses are similarly not supportive of a conclusion that the petitioner suffered substantial physical or mental abuse, as she relates the petitioner’s mental health issues to other factors such as the petitioner’s worry over his immigration status and his lack of adequate health care. When viewed in its totality, the evidence does not demonstrate that the incident certified by the [REDACTED] California Police Department resulted in substantial physical or mental abuse under the relevant factors described at 8 C.F.R. § 214.14(b)(1), and as required by section 101(a)(15)(U)(i)(I) of the Act.

*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.

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