



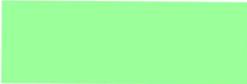
U.S. Citizenship
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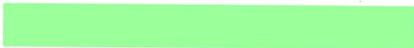


Date: **MAR 09 2015**

Office: VERMONT SERVICE CENTER

FILE: 

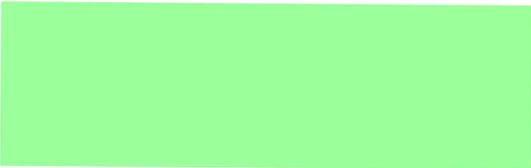
IN RE:

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:

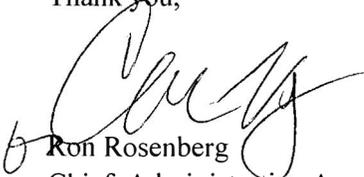


INSTRUCTIONS:

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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed. 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 did not establish that he suffered substantial physical or mental abuse as a result of the qualifying crime of which he was a victim. 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;

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) 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."

Relevant Facts and Procedural History

The petitioner, a native and citizen of El Salvador, entered the United States on January 30, 2004, as a B1/B2 nonimmigrant visitor. The record reflects that on April 16, 2012, the petitioner was working as a security guard at a restaurant. At approximately 10:40 p.m., a group of individuals became disruptive and the petitioner escorted the group outside. Once outside the restaurant, the individuals attacked the petitioner and another security guard, punching and kicking them multiple times. Several individuals witnessed the assault, and the police and the paramedics were called. The responding officer reported that when he arrived at the scene, the petitioner was bleeding from his forehead, and was experiencing severe pain to his upper torso and head, but declined to be taken to the hospital. The other security guard was transported for medical treatment. The petitioner cooperated with police by providing a full report of the incident, and was subsequently subpoenaed to serve as a witness in the case against his attackers.

In June of 2012, the petitioner was cited for driving without a license, and was subsequently detained by U.S. Immigration and Customs Enforcement (ICE). ICE issued the petitioner a Notice to Appear, placing him in immigration proceedings. 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 November 14, 2012. The director issued a Request for Evidence (RFE) of substantial physical or mental

abuse, among other issues. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility and denied the Form I-918 U petition. In her decision, the director found that the petitioner failed to establish that he suffered substantial physical or mental abuse as a result of the qualifying criminal activity. The petitioner timely appealed.

On appeal, the petitioner submits an additional personal affidavit clarifying that he declined to be transported to the hospital on the date of the assault because he did not believe that he would be able to afford treatment. The petitioner also submits his 2012 federal income tax return showing his low income.

Analysis

We review these proceedings *de novo*. A full review of the record, including the petitioner's statement on appeal, does not establish that the petitioner suffered substantial physical or mental abuse as a result of the certified criminal activity.

Substantial Physical or Mental Abuse

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 evaluates, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

In a personal affidavit dated October 20, 2012, the petitioner credibly recounted that he was repeatedly punched and kicked during the assault while other individuals held him down. The petitioner also indicated that he was treated by paramedics at the scene, but did not further describe his injuries or indicate how he was affected by the incident. Both the Supplement B and the police report briefly state that the petitioner was bleeding from his forehead and that he complained of severe pain to his upper torso and head. However, the petitioner refused medical attention. In response to the RFE, the petitioner resubmitted the October 20, 2012 personal affidavit and provided a letter from his employer, [REDACTED], dated February 8, 2014. In his letter, Mr. [REDACTED] stated that the petitioner was severely injured during the incident at the restaurant, and that since then he continues to be "tense, worried, and somewhat fearful." Mr. [REDACTED] did not provide detailed information regarding the petitioner's injuries, or further expand on the lingering effects of the crime on the petitioner's mental health. The petitioner also submitted an affidavit from his friend, [REDACTED] dated February 12, 2014, in which Mr. [REDACTED] indicated that the petitioner was "physically beat" by the perpetrators of the crime, and that he is in "constant fear for his life." In a letter dated February 10, 2014, the petitioner's wife, [REDACTED], asserted that the petitioner has not been the same since the incident, and lives in constant fear of being attacked. Ms. [REDACTED] lamented the lasting psychological damage that the assault caused to the petitioner, and indicated that the couple's financial situation did not allow for the petitioner to get help for his symptoms. However, neither Mr. [REDACTED] nor Ms. [REDACTED] provided sufficient probative information regarding the severity of the physical and mental harm suffered by the petitioner.

On appeal, the petitioner submits an additional personal affidavit, dated May 12, 2014, in which he describes his physical injuries, stating that he was hit several times in the head and torso, and was left with two bleeding wounds on his head. The petitioner asserts that he declined to be transported to the hospital because he does not have medical insurance and could not afford to pay for emergency care out of pocket. The petitioner submits his 2012 federal income tax return showing very little income for that year. The petitioner also states that the incident caused him severe psychological suffering and that he cannot afford professional counseling. However, the petitioner does not further discuss the mental harm nor does he sufficiently describe the connection between any psychological trauma and the assault that occurred on April 15, 2012.

When viewed in its totality, the preponderance of the relevant evidence does not establish the severity of the petitioner's physical injuries or impairment to the petitioner's mental soundness as a result of his victimization. Consequently, the record, as currently constituted, does not demonstrate that the petitioner suffered substantial physical and mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.