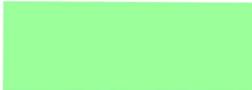
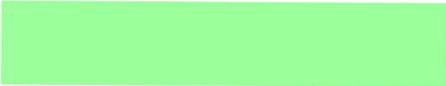




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 24 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)

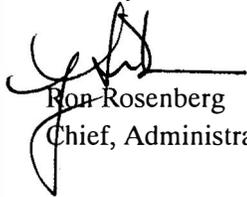
ON BEHALF OF PETITIONER:


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 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 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, additional evidence and copies of documents already included in the record.

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);

* * *

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

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 entered the United States in May, 2008, without admission, inspection 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 February 4, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On November 27, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity. The petitioner responded with additional evidence, which the director found insufficient to establish his eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition. The petitioner states on appeal that he has suffered substantial physical or mental abuse, including financial loss, as a result of having been a victim of qualifying criminal activity.

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 Form I-918 Supplement B that the petitioner submitted was signed by [redacted] Wage and Hour Division, U.S. Department of Labor (certifying official), on December 10, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as involuntary servitude and witness tampering. In Part 3.3, the certifying official referred to Title 18 United States Code (U.S.C.) §§1503 (influencing or injuring officer or juror generally) and 1512

(tampering with a witness), and Title 29 U.S.C. §§ 206 (minimum wage) and 207 (restrictions on former officers, employees, and elected officials of the executive and legislative branches), as the criminal activities that were 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 the petitioner and his wife were victims of witness tampering. The petitioner and his wife were hired by the suspect “to clean a car dealership and a restaurant. They worked for six weeks without pay. When they asked for their wages, [the suspect] threatened them with deportation.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner “was not paid and threatened with deportation if he complained.”

In their statements, the petitioner and his wife recounted that on May 19, 2011, they began working for the suspect cleaning a car dealership and restaurant. The suspect told them that he would pay them \$8.50 an hour at the end of the month in cash. The petitioner and his wife usually worked five hours a night, but if they did not finish the job within five hours, the suspect would make them work longer but stated he would only pay them for five hours. After working for the suspect for two months, he refused to pay the petitioner and his wife. When the petitioner’s wife would ask the suspect to pay them, he would “say very insulting and offensive things to [her]. He called her names and he told [her] that . . . he would call immigration on [them].” At the end of July, the petitioner and his wife stopped working for the suspect. The suspect owed the petitioner and his wife \$2,800 but he only paid them \$700. In September 2011, they filed a small claims action against the suspect and the judge ordered him to pay the petitioner and his wife the remaining \$2,100. The petitioner and his wife claim that they are afraid of the suspect, he has not paid them the money he owes them, and he has told other people not to hire the petitioner and his wife.

In a statement dated February 17, 2014, Dr. [REDACTED], a clinical psychologist, states that since 2011, the petitioner has been “experiencing emotional issues, particularly fears of not financially providing for their two children” who reside in Mexico with their grandmother. The petitioner has “[p]roblems with anxiety, fear, and depression for being taken advantage [of] and for being financially and emotionally harmed.” Dr. [REDACTED] states that according to the petitioner, he “suffered an episode of hypertension and chest pain” as a result of “intense stress,” including “[h]is stressful financial situation.” Dr. [REDACTED] diagnosed the petitioner with dysthymic disorder, and recommended that he continue psychotherapy.

Section 101(a)(15)(U)(i)(I) of the Act specifies that substantial abuse must be a consequence of the victimization (“[h]as suffered substantial physical or mental abuse *as a result of having been a victim* of criminal activity described in clause (iii)[.]” (Emphasis added). Factors relevant to a determination of substantial 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).

Here, the petitioner claims that he suffered substantial abuse as a result of the witness tampering crime, stating that the financial loss he suffered is only secondary to the emotional trauma he experienced from his victimization. However, the impact of the crime on the petitioner’s mental health is not sufficiently detailed in the record such that we can conclude that he suffered substantial mental abuse.

The petitioner provided in his statement, dated January 30, 2013, that he felt depressed at having been taken advantage of by the perpetrator; in his statement, dated December 19, 2013, he stated that he “truly suffered

mental abuse.” Although the petitioner has been affected by the crime, his statements lack the details necessary to demonstrate that his victimization resulted in serious impairment to his appearance, health or emotional well-being. Similarly, Dr. [REDACTED] narrative in the psychological evaluation, in which he diagnoses the petitioner with dysthymic disorder, does not sufficiently tie the petitioner’s mental health condition to the witness tampering or demonstrate that this condition existed prior to the initiation of the criminal activity and was, therefore, aggravated by the perpetrator’s actions. The Form I-918 Supplement B signed by an official from the Department of Labor also provides no meaningful information regarding any known or documented injuries to the petitioner, providing only at Part 3.6 that “Victim [the petitioner] was not paid and threatened with deportation if he complained.”

The totality of the evidence does not demonstrate that the petitioner’s victimization resulted in substantial mental abuse. As discussed, his statements do not contain sufficient details about the impact of the criminal activity on his mental health during the time period between the criminal activity in 2011 and his present appeal. In addition, the certifying official has not documented any known injuries to the petitioner, and Dr. [REDACTED] evaluation does not provide the causal connection between the witness tampering and the petitioner’s diagnosis, reporting that the petitioner’s mental health issue is partially related to his separation from his children, his own medical issues, and his financial situation. Consequently, under the relevant factors described at 8 C.F.R. § 214.14(b)(1), the petitioner has not satisfied section 101(a)(15)(U)(i)(I) of the Act and is, therefore, ineligible for U nonimmigrant classification.

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.