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



U.S. Citizenship
and Immigration
Services



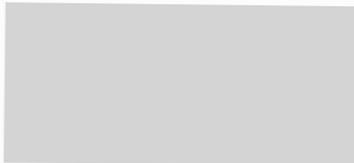
Date: Office: VERMONT SERVICE CENTER FILE: 

MAR 24 2015

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:

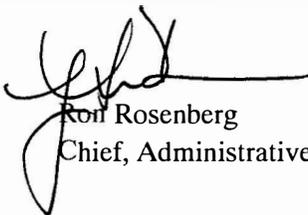


INSTRUCTIONS:

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,


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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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), 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 being a victim of qualifying criminal activity and consequently was ineligible for U classification. On appeal, the petitioner submits a brief, additional evidence, and copies of documents already 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)[.]

* * *

Obstruction of justice and witness tampering 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), 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 explained 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 last entered the United States in March 1994 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on December 31, 2012. On November 1, 2013, the director issued a Request for Evidence (RFE) that the petitioner, in part, suffered substantial abuse as the result of the certified criminal activities. 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 he suffered substantial physical or mental harm as a result of being the victim of qualified criminal activity.

Analysis

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, demonstrates 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 looks at, 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).

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Regional Administrator, Wage and Hour Division (WHD) of the U.S. Department of Labor (certifying official), on August 3, 2012. The certifying official lists the criminal activities of which the petitioner was a victim at Part 3.1 as obstruction of justice and witness tampering. In Part 3.3, the certifying official refers to 18 U.S. Code. § 1512, tampering with a witness, victim, or an informant, as the criminal activity that was investigated or prosecuted. The certifying official also listed obstruction of justice without accompanying statutory citation as criminal activity also 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 the petitioner's former employer, [REDACTED] (the Farm) and its principals, and their attorney, engaged in a pattern of intimidation and corrupt persecution through manipulation of the legal system and direct participation in an attempted deportation of the petitioner, with the intent to hinder, delay, prevent or dissuade the petitioner from testifying and participating fully and freely in the adjudication of his civil lawsuit against the Farm by reporting the petitioner's immigration status to U.S. Immigration and Custom Enforcement (USICE). 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 suffered substantial mental harm, pain and suffering and financial loss as a result of his victimization.

In his declaration dated December 21, 2012, which was submitted in response to RFE, the petitioner stated that he was employed by the Farm from November 18, 1995 to June 11, 2005. During this period of employment, he worked overtime but was never paid for the overtime. In 2005, he left the Farm to work for another employer. After he left the Farm, he filed a wage claim with the California Labor Commission for unpaid overtime and other labor violations. His case before the Commission was dismissed because he failed to appear on time for a scheduled hearing. In February 2006, he filed a civil lawsuit against the Farm and its principals for unpaid overtime and violation of other California labor laws, including retaliation by the Farm. The petitioner was represented by [REDACTED]. In June 2011, while the civil case was pending, his attorney informed him that the attorney for the Farm had contacted USICE about his immigration status and that USICE had forwarded the case to USICE's Enforcement and Removal Operation (ERO). On July 11, 2011, the civil action against the Farm was settled and the petitioner received back pay.

The attachment to the Form I-918 Supplement B indicates that on June 22, 2011, [REDACTED] attorneys received a letter from [REDACTED] stating that it had received a complaint from the Farm's attorney indicating that the petitioner was not eligible to be represented by [REDACTED]

because he was out of status. As a result, the petitioner's attorney informed him that they could no longer represent him in his civil lawsuit against the Farm, unless his immigration matter was resolved with USICE. The petitioner was advised not to return home because of the risk of deportation. Subsequently, the petitioner's attorney contacted USICE with regards to the petitioner's immigration status. USICE responded that it would take no enforcement action against the petitioner.

In his statements, the petitioner stated that the threat of deportation profoundly affected him and his relationship with his family. Prior to being reported to USICE, he was a sociable person who enjoyed visiting family members and going out with his family. After the incident, he developed a fear of going out in the public with his family for fear of being deported. He had sleepless nights; feeling depressed and sad; feeling exhausted; feeling paranoid about his family being harmed; crying when he thinks about what he and his family have been through; feeling confused and helpless; anxious, scared and nervous; and wanting to be alone most of the time. The petitioner stated that he began to drink excessively and gained weight. He relocated his family because of his fear that USICE may come after him. He contemplated going to counseling for help, but could not afford it. The petitioner further stated that he had mood swings; became mad easily and he had difficulty managing his emotions which has affected his relationship with his spouse. The statements from the petitioner's spouse and daughter reiterate the same information contained in the petitioner's statement about how he was impacted by the incident.

In a psychological evaluation dated January 6, 2014, which was submitted in response to RFE, [REDACTED] stated that the onset of the petitioner's mental and psychological problems started when he found out about the "potential deportation" in July 2011. [REDACTED] stated that prior to the incident with the Farm; the petitioner had no reported medical symptoms, no ongoing treatment or use of prescription medication and no medical problems. [REDACTED] stated that the petitioner reported to him that he is not the same person he was before the incident; that he is depressed, tired, nervous, distant, alienated and isolated from his own family. The petitioner also reported increased moodiness, feeling irritated and frustrated, a decreased libido, increased drinking and frequent headaches. The petitioner further reported that his oldest son accused him of creating the problem by filing the complaint about unpaid overtime and he blames himself for putting his family in the situation they are now. The petitioner described his mental state as "I feel like I'm no longer free here, I feel like I'm cooped up." [REDACTED] diagnosed the petitioner with Major Depressive Disorder, Moderate and Anxiety Disorder, which he indicated were related to the crime of witness tampering by the Farm. [REDACTED] recommended medical treatment in the form of anti-depressant medication and outpatient psychotherapy.

On appeal, the petitioner states that the director did not properly weigh the evidence of his mental health evaluation in her decision, and that the evidence of record is sufficient to establish that he suffered substantial physical and mental abuse as a result of the qualifying crime.

The qualifying criminal activity of witness tampering initiated the harm when the Farm's attorney contacted USICE to report the petitioner's undocumented immigration status in order to prevent his testimony and participation in his civil action and in any prospective administrative action against

the Farm for violations of federal labor laws. The petitioner's fear of his own deportation and its impact on his family as a result of being reported to USICE caused the deterioration of his mental and psychological health, as described by the petitioner in his own statements, in affidavits from his family members, and in [REDACTED] evaluation, which diagnosed the petitioner with Major Depressive Disorder, and Anxiety Disorder. The evidence in the record provides probative and credible details of the severity of the perpetrator's conduct in the witness tampering offense, and the extent of the petitioner's resulting injuries to his appearance, health, and mental soundness. Under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1), the totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as a victim of witness tampering and the petitioner has, therefore, satisfied the criterion at section 101(a)(15)(U)(i)(I) of the Act. We withdraw the director's contrary determination and find the petitioner statutorily eligible for U nonimmigrant status.

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.

In this case, the director determined the petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act as an alien present in the country without admission or parole and section 212(a)(9)(B)(i)(II) of the Act as an alien unlawfully present in the country for one year or more, without analysis, and denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated February 20, 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). Because the ground for denial of the petitioner's Form I-918 U petition has been overcome, we will return the matter to the director for reconsideration of the 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 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 February 20, 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.