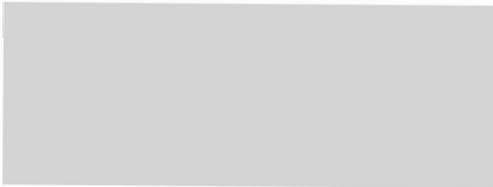




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 07 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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 The director's decision will be withdrawn and the matter returned for entry of a new decision.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 determining that the petitioner was excluded from consideration as a victim of qualifying criminal activity because she was culpable for the criminal activity and she was inadmissible to the United States. 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[.]

Domestic violence 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[.]

* * *

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

* * *

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

* * *

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

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 May, 2006, 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 May 24, 2011. On February 10, 2012, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States and requesting an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to waive the petitioner's grounds of inadmissibility. The petitioner responded with a Form I-192 and 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. On appeal, the petitioner asserts that she acted in self-defense against her abuser and she is not culpable for the qualifying criminal activity.

Claimed Criminal Activity

In her statement, the petitioner recounted that in March 2007, she met the man who perpetrated the domestic violence against her which forms the basis of her Form I-918 U petition. They began dating in March 2008, and in May 2008, they rented a room and moved in together. During their first night living together, her ex-boyfriend physically abused her and continued to abuse her during the time they lived together. After a few months, the petitioner and her ex-boyfriend moved in with the petitioner's mother and her mother's boyfriend. The physical abuse continued and became more violent while the petitioner and her ex-boyfriend lived with her mother.

In February 2009, the petitioner's ex-boyfriend told her that he did not want to be in a relationship with her anymore, so she moved out and moved in with her father. In April 2009, the petitioner and her ex-boyfriend reconciled, and soon after she realized she was pregnant. After the birth of their daughter, they fought more frequently and her ex-boyfriend became more violent, with several incidents resulting in trips to the hospital.

On July 13, 2010, the petitioner and her ex-boyfriend got into a fight. He threw her against the bed, jumped on top of her with his knees hitting her cheeks, and when she tried to call 911, he took the phone from her. He then ran out of the apartment, slamming the petitioner's hand in the door, and blocked the door so she could not leave. When the police arrived, they called an ambulance, took photos of the petitioner's injuries, and she gave a description of her ex-boyfriend.

On or about [REDACTED] 2011, the petitioner and her ex-boyfriend were fighting and when she tried to escape, he slammed the door on her hand, and their daughter witnessed the incident. The petitioner's hand began to swell and turn purple, but she did not call the police. Her ex-boyfriend refused to take her to the hospital, and she just took a painkiller for the pain. On [REDACTED] 2011, she filed a police report regarding the [REDACTED] 2011, incident.¹

The Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant [REDACTED] [REDACTED] California, Police Department (certifying official), on April 14, 2011. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the

¹ The [REDACTED] Police Department Investigative Report dated [REDACTED] 2011, is inconsistent with the petitioner's description of the incident. The Investigative Report indicates that on [REDACTED], 2011, the petitioner and her ex-boyfriend were fighting in their bedroom and when the petitioner attempted to open the door to leave, her ex-boyfriend slammed it closed, "grabbed her left arm, and threw her to the floor." When the petitioner told her ex-boyfriend that "she wanted to be with someone who would not mistreat her," her ex-boyfriend struck her twice in the face with a closed fist. They continued arguing until the petitioner's mother came into the bedroom.

certifying official referred to California Penal Code (CPC) § 273.5(A), spousal abuse, 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 indicated that the petitioner “suffered physical domestic violence in her place of residence by her boyfriend whom she lived with. There were multiple incidents of domestic violence where [the petitioner] was struck by suspect; she did not always seek the help of authorities out of fear of boyfriend and being arrested.” 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 “had abrasions and was in pain. She was struck in the face or on her head by suspect. She was pinned down by suspect, unable to move because suspect kept her arms and body down with his knees and hands.”

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director’s decision to deny the petitioner’s Form I-918 U petition.

Culpable for the Qualifying Criminal Activity

The investigative reports of the domestic violence incidents that occurred on [REDACTED] 2010, and [REDACTED] 2011,² demonstrate that the petitioner was the victim and that she was not arrested for committing any crimes. In the [REDACTED] 2010, investigative report, the reporting officer stated that the petitioner “struck” her ex-boyfriend with a brush on his thigh after he struck her. According to 8 C.F.R. § 214.14(a)(14)(iii): “A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.” On appeal, the petitioner claims that “it is the role of law enforcement to determine whether an individual is the ‘victim’ of a crime . . . not USCIS.” However, we determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

When the director determined that the petitioner was excluded from consideration as a victim of qualifying criminal activity because she was culpable for the criminal activity, she relied on the petitioner’s arrests on [REDACTED] 2010, and [REDACTED] 2011, for inflicting corporal injury on a spouse/cohabitant.³ However, these crimes were not the crimes that were certified in the Form I-918 Supplement B. The petitioner was not arrested for committing any crime(s) during the [REDACTED] 2010, and [REDACTED] 2011, incidents that were certified in the Form I-918 Supplement B, and it does not appear that the police investigated the petitioner’s actions against her ex-boyfriend. The petitioner’s act of self-defense during the [REDACTED] 2010, incident was not the act of aggression that created the need for the police to respond to the incident. Therefore, the petitioner is not culpable for the qualifying criminal activity that was investigated by the certifying agency. Because the petitioner is not culpable of the qualifying criminal activity, she can be considered a victim of that qualifying criminal activity. Accordingly, the petitioner has established the

² Although the petitioner’s statement and the investigative report are inconsistent, there is no indication that the petitioner was the perpetrator during this incident.

³ In a letter dated March 12, 2012, Deputy District Attorney [REDACTED] states that no records were located regarding any criminal complaints filed against the petitioner in the [REDACTED] District Attorney’s Office.

requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director's contrary determination.

The Remaining Statutory Criteria

The petitioner has established, through the Form I-918 Supplement B and other evidence, that she possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States; however, she must also establish that she suffered substantial physical or mental abuse as a result of the qualifying crime. In her denial decision, the director did not evaluate substantial abuse under section 101(a)(15)(U)(i)(I) of the Act, and there is insufficient evidence in the record for us to make this determination. Therefore, the matter will be remanded to the director so that she may evaluate whether the petitioner has suffered substantial abuse as a result of being the victim of qualifying criminal activity and issue a new decision.

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). The petitioner has established that she is the victim of qualifying criminal activity. However, the petitioner must establish that she suffered substantial physical or mental abuse as a result of her victimization, as required under section 101(a)(15)(I)(i)(I) of the Act. The director's denial did not address substantial abuse to the petitioner. Consequently, the matter must be remanded to the director for further action and the issuance of a new decision on the Form I-918 U petition.

ORDER: The March 26, 2013, decision of the Vermont Service Center is withdrawn. The matter is returned to the director for 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.