U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-A-R-M-

DATE: SEPT. 3, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The Director's decision will be withdrawn and the petition will be remanded.

I. 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)[.]
>
> . . . .

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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States in March 1996. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on September 23, 2010. The Director issued a request for evidence (RFE) of, among other things, substantial physical or mental abuse suffered by the Petitioner as the result of the qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 and the accompanying Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The Petitioner timely appealed the denial of the Form I-918.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. On appeal, the Petitioner asserts that the Director "committed clear legal and factual error" in denying his Form I-918. A review of the record supports the Petitioner's claims as it appears that the Director's decision applied facts not pertaining to the Petitioner's case. Accordingly, the Director's March 9, 2015, decision is withdrawn and the Form I-918 is remanded for further review to determine whether the Petitioner has demonstrated his eligibility for U nonimmigrant status.

As always, in visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010).

ORDER: The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us review.

Cite as *Matter of J-A-R-M-, ID#15333*(AAO Sept. 3, 2015)