



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-R-O-

DATE: SEPT. 9, 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* section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 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 appeal will be dismissed.

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);
- (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[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii) This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . . ;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .

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.”

(b)(6)

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 citizen of Mexico who claims to have entered the United States in February 2010, without inspection, admission or parole. 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 August 28, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The Director subsequently issued a request for evidence (RFE) for documentation that the Petitioner suffered resultant substantial physical or mental abuse and was helpful to the investigation or prosecution of the qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918 and Form I-192. The Petitioner appealed the denial of the Form I-918 petition. On appeal, the Petitioner claims that she suffered substantial physical or mental abuse and that she was helpful in the investigation of the qualifying criminal activity.

The Form I-918 Supplement B was signed by Captain [REDACTED], [REDACTED] Sheriff's Department, California (certifying official), on March 11, 2013. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, he referred to the California Penal Code (Cal. Penal Code) § 273.5(a) (domestic violence), as the crime that was investigated or prosecuted. In addition, the Petitioner submitted a police report, pictures of her injury, a psychological examination, her declaration, a photocopy of the criminal code, her birth certificate, and a page from her passport.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, and the brief and supplemental evidence on appeal, the Petitioner has demonstrated that she was the victim of qualifying criminal activity, she possessed information regarding qualifying criminal activity, and she was helpful in the investigation or prosecution of qualifying criminal activity. However, she has not established that she suffered resultant substantial physical or mental abuse.

(b)(6)

A. Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate that she has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity, and “since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested.” Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III) and 1184(p); 8 C.F.R. § 214.14(b)(3).

On appeal, the Petitioner asserts that because she did not want the perpetrator of the domestic violence against her (her former partner) arrested, the Director erroneously determined that she was not helpful to law enforcement authorities. The Petitioner stated that she cooperated with the sheriff’s department and that the Form I-918 Supplement B indicated that she was helpful in the investigation but was not requested to provide further assistance because her former partner was never arrested and the prosecution was barred by the statute of limitations.

The Form I-918 Supplement B indicated “Yes” to the question at Part 4.2 regarding whether the Petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity. At Part 4.3, Captain [REDACTED] indicated that the Petitioner had not been requested to provide further assistance in the investigation and/or prosecution of the qualifying criminal activity. He further indicated at Part 4.4 that the Petitioner had not unreasonably refused to provide assistance. In discussing the Petitioner’s helpfulness at Part 4.5, Captain [REDACTED] indicated that the “Statute of limitations has passed on this case. Suspect was never located.” The attached incident report stated that when the sheriff’s deputy arrived to the Petitioner’s home in response to her domestic violence call, she told him that after her former partner struck her during an argument, she “was afraid so she grabbed her child and locked herself in another room.” According to the report, the Petitioner stated that it was the first time that her former partner used physical force against her, that she “was not scared” of her former partner, and “did not want him to be arrested.” The report further indicated that although the Petitioner declined an emergency protection order and further assistance for her injury, she allowed the deputy to take pictures of her injuries.

The Petitioner’s statement that she did not want her former partner to be arrested and did not know how to contact him does not indicate that she refused to provide assistance to the deputy after her initial cooperation. Rather, the deputy’s report shows that when the deputy arrived at the scene, the Petitioner identified her former partner as the assailant, and allowed photographs to be taken of her injuries, which subsequently led to an investigation for the Petitioner’s former partner and possible witnesses. It further indicated that the domestic violence case was “pending” and contained information on how to contact the Petitioner “for follow up.” The deputy’s report, therefore, does not show that the Petitioner refused to provide further assistance in the investigation of her former partner after her initial cooperation with the sheriff’s department. Further, the Form I-918 Supplement B reflects that Captain [REDACTED] certified the Petitioner’s helpfulness, and also certified that the Petitioner has not unreasonably refused to provide assistance in the crime of which she was a victim, and has not been requested to provide further assistance in the investigation or prosecution of the Petitioner’s partner. Accordingly, the preponderance of the relevant evidence of record demonstrates that the Petitioner was helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

(b)(6)

B. Substantial Physical or Mental Abuse

When assessing whether substantial physical or mental abuse was suffered as a result of having been a victim of qualifying criminal activity, USCIS looks at factors such as 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).

On appeal, the Petitioner contends that the Director did not consider the psychological evaluation stating that the Petitioner has Post-Traumatic Stress Disorder (PTSD) as a result of the domestic violence and the Petitioner's history of child abuse. She further contends that the Director erroneously determined that she did not suffer substantial abuse on the basis that the police report indicated that there were no witnesses to the domestic violence and she declined medical assistance.

In her declarations, the Petitioner described the single incident of domestic violence in September 2001. She recalled that after her former partner hit her, she was "extremely worried" for her baby and herself, and then immediately took the phone and locked herself and her baby inside the bathroom. The Petitioner recounted that her former partner screamed and threatened to hurt her if she contacted the police, and that she was "extremely scared" and called the police after he left their home. The police report stated that the Petitioner's right cheek was a "reddish color and swollen. There was . . . purple discoloration, at the top of the bruise, under her eye. . . . [The Petitioner] looked visibly upset." The Petitioner indicated that after the incident she felt depressed and that her depressed feelings have been exacerbated by flashbacks about the incident and by her fear of removal from the United States. The Petitioner further provided a declaration from her husband indicating that she had become distraught and fearful of her former partner as a result of the domestic violence.

The Petitioner also provided a psychological evaluation from [REDACTED] a licensed clinical psychologist, stating that as a result of the incident the Petitioner indicated that she has flashbacks, difficulty falling asleep, difficulty concentrating, hypervigilance, loss of appetite, and feelings of alienation and shame. Ms. [REDACTED] diagnosed the Petitioner with having symptoms of PSTD and depression. She also indicated that the Petitioner had a history of child abuse. The Petitioner further provided a mental health evaluation from [REDACTED] a marriage and family therapist intern, and [REDACTED], a licensed marriage and family therapist and clinical supervisor, with [REDACTED], which discussed the incident of domestic violence in 2001, but did not address the Petitioner's history of child abuse. The psychological evaluation indicated that the Petitioner's dealings with immigration and fear of removal from the United States have exacerbated the Petitioner's flashbacks regarding the abuse, and that the Petitioner is distressed that she will not be able to make enough money to support her three children and adequately provide for her child with Downs Syndrome in Mexico. The Petitioner was diagnosed with having PSTD, depression, panic attacks, and threat of disruption by separation of family members.

The record demonstrates that the Petitioner was subjected to a single incident of abuse by the perpetrator and does not indicate that the physical harm inflicted upon her resulted in a lasting

physical impairment or injury. The Petitioner's declarations and the psychological evaluations generally discuss the Petitioner's depressed feelings and her flashbacks regarding the abuse, but the Petitioner does not sufficiently describe the connection between her mental health issues and the abuse, as she also relates her depression to distress over her fear of removal from the United States, to not being able to financially support her children, and adequately take care of her Downs Syndrome child in Mexico. Although we acknowledge that the Petitioner experienced abuse in her childhood, the Petitioner has not sufficiently demonstrated that the single incident of abuse described in the record resulted in substantial physical or mental abuse as required by subsection 101(a)(15)(U)(i)(I) of the Act.

IV. CONCLUSION

The Petitioner has established that she was the victim of a qualifying crime, she possessed information regarding qualifying criminal activity, she was helpful in the investigation or prosecution of qualifying criminal activity, and the qualifying criminal activity occurred in the United States. However, she has not established that she suffered resultant substantial physical or mental abuse. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

As in all visa petition proceedings, the Petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). *Matter of Otiende*, 26 I&N Dec. 127 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of C-R-O-*, ID# 13229 (AAO Sept. 9, 2015)