



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

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

MATTER OF I-S-H-

DATE: SEPT. 18, 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 appeal will be dismissed.

The Director denied the petition, concluding that the Petitioner had not established that he had suffered substantial physical or mental abuse as a result of qualifying criminal activity and noting that the Petitioner appeared inadmissible under section 212(a)(1)(A)(iii) of the Act (physical or mental disorder) and did not submit requested evidence regarding his potential inadmissibility. On appeal, the Petitioner submits an updated statement, a brief letter from his counsel of record, and additional evidence.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides 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 (ii);
 - (II) the alien . . . possesses information concerning criminal activity described in clause (ii);
 - (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 (ii); 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;

* * *

(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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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

Matter of I-S-H-

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 last entered the United States in October 2010, without admission, inspection or parole. The record indicates that he had previously been removed from the United States on July 8, 1999 pursuant to a final order of removal issued on June 30, 1999. The Petitioner thereafter reentered the United States without admission, inspection or parole on multiple occasions. In May 2010, and again in October 2010, the Petitioner was removed from the United States pursuant to reinstated orders of removal. The record discloses that the after his most recent entry in October 2010, the removal order against the Petitioner was again reinstated and he was removed from the United States on June 20, 2013.

The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on September 9, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director issued a request for evidence (RFE), including, among other things, evidence establishing that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity and a Form I-693, Report of Medical Examination and Vaccination Record, executed by a designated Civil Surgeon, evaluating the Petitioner for alcohol abuse based on his multiple arrests relating to alcohol related violations. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility. The Director denied the petition, and the Petitioner timely appealed.

A. Claimed Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed on July 1, 2013 by [REDACTED] Chief Deputy, [REDACTED] Sheriff’s Office, [REDACTED] South Carolina (certifying official). The certifying official indicated “Armed Robbery; Carjack” next to the box marked “Other” in Part 3.1 of the certification, which inquires about the type of criminal activity of which the Petitioner was a victim. In Part 3.3, the certifying official listed sections 16-11-330 and 16-03-1075 of the Code of Laws of South Carolina, which relate to the offenses of Robbery and Attempted Robbery While Armed with Deadly Weapon and Carjacking, respectively, as the corresponding statutory citations for the criminal activity investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, Mr. [REDACTED] stated that the Petitioner reported that three unknown suspects approached him while he was in his vehicle, that one of them brandished a gun and robbed him of his wallet, and that he was forced out of his vehicle at gunpoint and his vehicle stolen. The certifying official also indicated at Part 3.6, which asks for a description of any known or documented injury to the Petitioner, that no physical injuries were reported.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

A. Substantial Physical or Mental Abuse

The record does not demonstrate that the Petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

In his two written statements submitted below, the Petitioner recounted being robbed and carjacked at night on July 23, 2000 by two perpetrators who approached him after he had dropped off a friend.¹ He recalled that a man approached him to sell drugs and pulled out a gun when the Petitioner turned him down. The Petitioner stated that the man forced him out of his vehicle, and signaled to a second man, who came and drove off with the vehicle. He described how the man holding the gun hit him on the side of his head, forced him to lie down on the floor, and took everything in his possession, including his wallet and shoes. The Petitioner stated that during the next 15 to 20 minutes, the man repeatedly threatened him with the gun. After the perpetrator left, the Petitioner ran to his home and called the police, but the suspects were ultimately never apprehended. The Petitioner indicated that his life has changed dramatically since the trauma of this incident, and that he no longer feels secure and in control as he did previously. He has had nightmares and is scared and depressed, especially as he is now in Mexico, alone and away from his family.

On appeal, the Petitioner reiterates these events and adds that the assailant who forced him out of the car pointed the gun at his head. The Petitioner's account of the incident in question is inconsistent with the Form I-918 Supplement B and the narrative contained in the police incident report. The police report indicated that the Petitioner reported being approached by three men, one of whom displayed a handgun and had him step out of the vehicle while the two others searched the car. It also indicated that the Petitioner recounted how the individual with the gun patted him down and took his wallet while one of the other men drove off with the car. The report does not reflect that the Petitioner ever reported that the assailant(s) hit him on the head, forced him to the ground, repeatedly threatened him, or stole anything other than his wallet. Similarly, the certifying official indicated in the Form I-918 Supplement B that no physical injuries were reported, contradicting the Petitioner's assertion in these proceedings that he was hit in the head by one of the assailants. The record contains no explanation for these or the other discrepancies between the Petitioner's account to the police and his written statements in these proceedings, including regarding the number of perpetrators.

¹ Although the Form I-918 Supplement B indicated that the offense occurred on February 23, 2000, this appears to have been a typographical error as the Petitioner's statements and underlying police incident report reflect that the date of the incident was July 23, 2000.

The Petitioner's statements also addressed the impact of the criminal incident on his life, asserting that he feared for his life during the traumatic incident, which has changed his life completely and left him full of fear. He described a loss of security, being fearful of being around weapons, and having nightmares where he relived the assault and woke up trembling and screaming. The Petitioner also recalled being tired, unable to eat, and being afraid to walk out alone. He indicated that with his family's support, he had felt safer, but since returning to Mexico, he has felt lonely, scared, and depressed. On appeal, the Petitioner submits several letters from his family members. However, the letters primarily focus on the Petitioner's depression resulting from his forced separation from his family in the United States.

Upon review of the record in its entirety, we find that the Petitioner not demonstrated that the injuries he sustained as a result of the armed robbery and carjacking rise to the level of substantial physical or mental abuse. As discussed, the Petitioner's account of the criminal incident and the harm he incurred as relayed in these proceedings are inconsistent with the account he had previously provided to law enforcement officials following the incident. Further, the certifying official specifically stated that no physical injuries were reported. Our review indicates that there is no evidence in the record that the Petitioner suffered ongoing or serious pain or injury as a result of being hit with a gun during the incident. Additionally, although the Petitioner reports being unable to sleep or eat and feeling lonely, depressed, scared after this incident, the record lacks probative evidence to support such an assertion. The Petitioner's own evidence indicates that the Petitioner's claimed depression is in large part due to his separation from his family in the United States following his removal to Mexico and as such, is not harm resulting from a qualifying crime. The record does not support a finding that the 2000 armed robbery and carjacking caused the Petitioner's mental health decline or that such decline was a serious or a lasting result of the commission of the offenses. Based on the record, the Petitioner has not shown any permanent or serious harm resulting from the qualifying criminal activity. Accordingly, the record is insufficient to support a finding that the Petitioner suffered physical or mental that was substantial under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1).

B. Inadmissibility under Section 212(a)(1)(A)(iii) of the Act

Section 212(d)(14) of the Act, requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, in conjunction with a Form I-918 in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As we do not have jurisdiction to review whether the Director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The only issue before us is whether the Director was correct in finding the Petitioner here inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

(b)(6)

Matter of I-S-H-

Upon review of the record, the record supports the Director's determination that the Petitioner is inadmissible under section 212(a)(1)(A)(iii) (physical or mental disorder) of the Act², based on evidence indicating that the Petitioner suffers from alcohol abuse. The Director, however, denied the instant petition in part for failure to file requested evidence, namely a Form I-693, executed by a U.S. Civil Surgeon who had evaluated him for alcohol abuse. As the Petitioner explains on appeal, he has been outside the United States since before the filing of the instant petition and thus, was unable to have a Form I-693 and corresponding medical examination completed by a Civil Surgeon in the United States. He has, however, provided U.S. Department of State medical examination forms and corresponding medical/psychological evaluations completed by [REDACTED] M.D., a qualified "panel physician."³ We find that the Petitioner's submission of Department of State medical forms and records satisfies the purposes of the Director's RFE for a Form I-693. Dr. [REDACTED] in his report, concludes⁴ that the Petitioner has a Class A medical condition, Alcohol Use Disorder with Harmful Behavior Associated. The report further notes that the Petitioner has not suspended or decreased his alcohol use and harmful behavior is still associated. Accordingly, the record supports a finding of the Petitioner's inadmissibility under section 212(a)(1)(A)(iii) of the Act.

As the Petitioner is inadmissible, the Director properly required the Petitioner to file a Form I-192 to waive the stated grounds of inadmissibility.⁵ The record indicates that the Director denied the Petitioner's Form I-192 solely on the basis of the denial of the Form I-918 U petition. We have affirmed here the denial of the Form I-918 on appeal. Further, as noted, we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. *See* 8 C.F.R.

² Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

- (1) Health-related Grounds
 - (A) In general
 - Any alien—

* * *

- (iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)--
 - (I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
 - (II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, []
- ... is inadmissible.

³ The U.S. Department of State only accepts medical examinations of immigrant or refugee applicants (and related medical forms) completed by authorized physicians. *See* 9 FAM 40.11 N7.1 (role of panel physicians).

⁴ Dr. [REDACTED] also diagnosed the Petitioner as suffering from Antisocial Personality Disorder with Harmful Behavior Associated, presenting a pervasive pattern of disregard for and violation of the rights of others, and a lack of remorse for his criminal behavior.

⁵ The Director determined the Petitioner to be inadmissible on several other grounds. However, given our finding of the Petitioner's inadmissibility under section 212(a)(1)(A)(iii) of the Act and as the Petitioner has not contested any of the grounds of inadmissibility, further discussion of these other grounds of inadmissibility identified by the Director is unnecessary.

Matter of I-S-H-

§ 212.17(b)(3). Accordingly, the Petitioner has not established that he is admissible to the United States or that the grounds of inadmissibility have been waived. He is, consequently, ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

IV. CONCLUSION

The Petitioner has not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Furthermore, the Petitioner is inadmissible to the United States and his grounds of inadmissibility have not been waived. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his petition must be denied..

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); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-S-H-*, ID# 13590 (AAO Sept. 18, 2015)