



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

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

MATTER OF B-K-V-C-

DATE: FEB. 22, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 Petitioner subsequently appealed. We withdrew the Director's decision and remanded the matter for entry of a new decision. On our own motion, we now reopen this matter and withdraw our prior decision. 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[.]

Domestic violence is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act, which also provides that a qualifying criminal activity involves the specifically listed crimes “or any similar activity in violation of Federal, State, or local criminal law”

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

(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.

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.’

(b)(6)

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II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Guatemala who claims to have last entered the United States in August 2000 without inspection. 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 21, 2012. On November 20, 2013, the Director issued a request for evidence (RFE) that the crime listed on the Form I-918 Supplement B was qualifying criminal activity from which the Petitioner suffered substantial physical or mental abuse. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918. The Petitioner filed a timely appeal. On appeal, the Petitioner claimed that she was the victim of domestic violence and suffered substantial physical or mental abuse.

In our prior decision on this matter, dated June 5, 2015, we withdrew the Director's decision pending the adjudication of the Form I-485, Application to Register Permanent Residence or Adjust Status, that the Petitioner had filed in conjunction with her approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, as an abused spouse of a U.S. citizen. Upon remand, we deferred issuing a decision on the merits of the Petitioner's Form I-918 until the Petitioner's eligibility for lawful permanent residency had been determined, but are now reopening the matter on our own motion to determine the Petitioner's eligibility for U nonimmigrant status.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on our review of the evidence submitted below and on appeal, the Petitioner has not overcome all of the grounds of denial.

A. Certified Criminal Activity

Assistant District Attorney [REDACTED] District Attorney's Office in New York (certifying official), signed the Form I-918 Supplement B on July 16, 2012, listing the criminal activities of which the Petitioner was a victim at Part 3.1 as involving or being similar to domestic violence. In Part 3.3, the certifying official referred to "PL 215.50(3) criminal contempt 2"¹ as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official

¹ New York Penal Law § 215.50(3), states, in pertinent part:

A person is guilty of criminal contempt in the second degree when he engages in any of the following conduct:

....

3. Intentional disobedience or resistance to the lawful process or other mandate of a court

....

N.Y. PENAL LAW § 215.50(3) (McKinney 2015)

to briefly describe the criminal activity being investigated or prosecuted, the certifying official indicated that “[E-R-]² went into [the Petitioner’s] apartment in violation of a court order of protection.” At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, no information is provided. At Part 4.5, the certifying official indicates that the case was prosecuted.

B. The Petitioner Was the Victim of Qualifying Criminal Activity

The Petitioner has demonstrated that the certified crime was one related to domestic violence, which is qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Although the Form I-918 Supplement B indicated that the criminal statute for the offense investigated and prosecuted was Criminal Contempt in the Second Degree under New York Penal Law § 215.50(3), the record of proceedings, which includes the incident report from the police department, a copy of E-R-’s arrest warrant, and the court’s order of protection that the Petitioner obtained against E-R-, supports the certifying official’s certification of the crime as a domestic violence offense.

The qualifying criminal activities set forth in section 101(a)(15)(U)(iii) of the Act, including domestic violence, are not listed as specific statutory violations but rather in more broad terms, allowing for the possibility that varying state criminal statutes may name an offense differently than those on the statutorily enumerated list. *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Register 53014, 53018 (Sept. 17, 2007). The record of proceedings provides ample evidence that the underlying criminal offense was detected and investigated as a domestic violence offense under New York law by the certifying agency and that the Petitioner was a victim of such offense. Consequently, the record of proceedings demonstrates that the Petitioner was a victim of qualifying criminal activity and we withdraw the Director’s determination on this issue. The Petitioner is ineligible for U nonimmigrant classification, however, because she has not shown that the certified criminal activity of which she was a victim resulted in substantial physical or mental abuse.

C. The Petitioner Has Not Established Resultant Substantial Physical or Mental Abuse

In her September 15, 2014, denial decision, the Director stated: “Even if qualifying criminal activity were found to be present, the evidence submitted does not show that you suffered substantial mental or physical abuse as a result of the criminal activity perpetrated against you.” We concur with the Director’s determination on this issue, as the record is presently constituted.

At Part 3.6 of the Form I-918 Supplement B, which asks for a description of any known or documented injury to the Petitioner, the certifying official left the space blank. In a personal statement submitted with the Form I-918, the Petitioner recounted that E-R- was physically abusive to her. She also reports that, as indicated in the supporting evidence she submitted, E-R- entered her apartment when an order of protection against him was still in effect and that, as a result, she is very

² Name withheld to protect the individual’s identity.

afraid because E-R- is a building superintendent and “knows how to get into any place he wants to get into.” She reports that she is scared he will come back to hurt her and that E-R- told her he would take their son from her. She explains that she has trouble sleeping because she stays up late at night “thinking about all the bad things [E-R-] did to me.” She indicates that she has seen a counselor three times but she is busy with her children and has moved, which makes it difficult to see a counselor. In response to the RFE, the Petitioner submitted a second personal statement, in which she repeats the same information from her first personal statement regarding the harm she experienced from the certified criminal activity.

The Petitioner generally indicates that she is scared and has trouble sleeping since the certified criminal activity took place, but she does not explain with any probative details the nature of her injuries, the severity of E-R-’s conduct and its resulting harm to her, and the extent to which there is serious harm to her appearance, health, or physical or mental soundness, including the degree to which the qualifying criminal activity may have aggravated any preexisting conditions. *See* 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial physical or mental abuse). Upon our *de novo* review of the record of proceedings in its entirety, the Petitioner has not demonstrated that she suffered substantial physical or mental abuse resulting from the certified criminal activity under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1) and as required by 101(a)(15)(U)(i)(I) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish her eligibility. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The portion of the Director's decision finding that the Petitioner was not a victim of qualifying criminal activity is withdrawn. However, the Petitioner has not established that she suffered substantial physical or mental abuse as a result of the qualifying criminal activity and she is, therefore, ineligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.

Cite as *Matter of B-K-V-C-*, ID# 12948 (AAO Feb. 22, 2016)