



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

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

MATTER OF N-A-S-L-

DATE: NOV. 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. See Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he suffered substantial abuse as a result of having been the victim of qualifying criminal activity.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. He asserts that the Director erred in finding that he did not suffer substantial mental abuse as a result of being the victim of qualifying criminal activity.

Upon *de novo* review, we will withdraw the decision of the Director and remand the matter to the Director for further proceedings and the entry of a new decision.

I. 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

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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[.]

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See* *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has overcome the Director's ground for denial. We will withdraw the Director's decision and remand the matter to the Director for further proceedings.

A. Criminal Activity Certified as Being Detected, Investigated, or Prosecuted

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed by the [REDACTED] New Mexico (certifying official). At part 3.3 of the Supplement B, the certifying official cited New Mexico Statutes Annotated (NMSA) section 30-24-3(A)(2), intimidating or threatening a witness, as the statutory citation for the criminal activity that was investigated or prosecuted. At part 3.1, the certifying official asserted that the offense committed against the Petitioner involved or was similar to the qualifying crime of witness tampering.

B. Substantial Physical or Mental Abuse

The Director concluded that the Petitioner did not establish that he suffered substantial abuse as a result of being the victim of witness tampering because he experienced only financial losses and intimidation. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, we consider, among other issues, 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. *See* 8 C.F.R. § 214.14(b)(1).

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A letter from the attorney who represented the Petitioner in his civil claim indicates that the Petitioner was employed at a bakery in New Mexico where his employer, G-Z-,¹ did not pay him minimum wage or overtime premiums. G-Z- terminated the Petitioner's employment shortly after the Petitioner submitted a written request for minimum wage and overtime pay.

In his first personal statement, the Petitioner stated that he worked long hours at the bakery and was paid less than minimum wage. He indicated that whenever he asked G-Z- to pay him minimum wage, G-Z- responded that he should be thankful that he worked at night and had no problems with immigration. The Petitioner noted that he eventually sought advice from a local community group, which helped him request minimum wage. He stated that after he made the request, G-Z- became angry with him, yelled at him at work, and subsequently fired him. The Petitioner stated that being fired was "unbearable and heartbreaking" and that he "entered into a crisis of depression which [he has not] been able to overcome." The Petitioner explained that he felt worthless because he was unable to support his fiancée and her children, and that his worries prevented him from eating or sleeping. He stated that he made poor decisions during this time, "including trying to take [his] life away." The Petitioner indicated that he struggled to find work for 9 months and then had to move to Iowa for a job, which caused him to be separated from his family. The Petitioner also stated that he suffered previous difficulties, including living in severe poverty as a child in Guatemala, and previously working for less than minimum wage at an agricultural processing plant.

In a second personal statement, the Petitioner stated that he has struggled to overcome the psychological damage that resulted from his employment and firing from the bakery. The Petitioner reiterated that G-Z- intimidated him by refusing to pay him minimum wage and stating that he "should be thankful that after being an illegal immigrant [he] was making anything at all." He stated that G-Z- mistreated him and then fired him. The Petitioner reported that he felt suicidal. He also stated that he and his family were separated for a year and a half after he moved to Iowa for a new job.

In connection with the Supplement B, the certifying official issued an order on the Petitioner's Motion for U-Visa Certification, which the Petitioner filed during civil proceedings against the perpetrator in the [REDACTED] Court in [REDACTED] New Mexico. The certifying official indicated in the order that the Petitioner "suffered substantial emotional distress" as a result of being fired from his job shortly after filing a wage complaint. At part 3.6 of the Supplement B, the certifying official referenced an evaluation by [REDACTED] psychotherapist, regarding mental abuse to the Petitioner.

[REDACTED] issued a psychological evaluation of the Petitioner, reporting that, according to the Petitioner, he "fell into a deep depression and anxiety" after being fired from his job at the bakery because he was unable to support his family. She stated that he reported being unemployed for 9 months before moving away from his family to work in Iowa. [REDACTED] indicated that the Petitioner reported that he felt frustrated, was unable to participate in family activities, lost his

¹ This decision uses initials to protect the identities of individuals.

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appetite, had difficulties in his relationship with his fiancée, and that he cried alone at home during the day. [REDACTED] also stated that the Petitioner previously worked for less than minimum wage and that he has experienced long-term effects of exploitation by both G-Z- and his former employer in Iowa. In a second psychological evaluation submitted on appeal, [REDACTED] states that the Petitioner reported attempting suicide on one occasion. She indicates that, according to the Petitioner, his depression became so severe that he attempted suicide and feels that he lost his family because of his depression and his inability to support them after G-Z- fired him.

A former coworker of the Petitioner's, J-Z-, who joined him in the civil claim against G-Z-, stated that G-Z- was verbally abusive toward the employees who were immigrants. J-Z- indicated that G-Z- yelled at them, swore at them, called them derogatory names, and told them "there was nothing [they] could do against him because [they] had no documents." J-Z- stated that after getting fired from the bakery, the Petitioner was sad and afraid that G-Z- would have him deported. J-Z- also indicated that the Petitioner became depressed due to his inability to find a new job, and that he "lost his relationship with his fiancé[e]" after moving to Iowa for work. Several other friends similarly stated that the Petitioner became severely depressed and anxious after being fired and struggling to find a new job.

The evidence of record establishes that the Petitioner suffered long lasting and severe emotional harm as a result of the witness tampering of which he was a victim. See 8 C.F.R. § 214.14(b)(1). The witness tampering was achieved through the Petitioner's firing after he filed a wage complaint. As a result of his firing, the Petitioner became depressed and attempted to commit suicide. His emotional difficulties affected his ability to function on a daily basis and his relationship with his family. Although the record also shows that the Petitioner previously worked long hours for less than minimum wage at a prior job as a teenager, the evidence establishes that the main source of the Petitioner's depression, suicide attempt, and family difficulties was his experience at G-Z-'s bakery. Accordingly, we find that the Petitioner suffered substantial 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.

C. Admissibility

Although the Petitioner has established his statutory eligibility for U nonimmigrant classification, the U petition may not be approved because he remains inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a waiver application in order to waive a ground of inadmissibility. We have no jurisdiction

to review the denial of a waiver application submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the Director denied the Petitioner's waiver application solely on the basis of the denial of the U petition. The Director found the Petitioner inadmissible under section 212(a)(6)(A)(i) (entry without inspection) of the Act. However, the Director did not evaluate the Petitioner's admissibility in detail or determine whether USCIS would have favorably exercised its discretion and approved the waiver. Because the Petitioner has overcome the Director's ground for denying his U petition, we will remand the matter to the Director for reconsideration of the Petitioner's waiver application.

III. 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). Here that burden has been met as to the Petitioner's eligibility under section 101(a)(15)(U)(i)(I)-(IV) of the Act. The U petition is not approvable, however, because the Petitioner remains inadmissible to the United States and his waiver application was denied. As such, the matter will be remanded to the Director for further action and issuance of a new decision.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. 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.

Cite as *Matter of N-A-S-L-*, ID# 12607 (AAO Nov. 22, 2016)