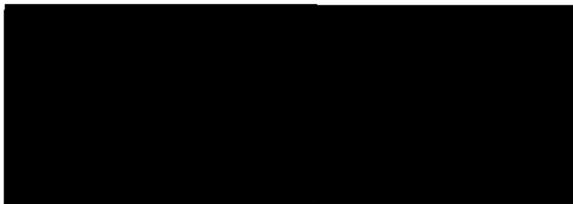




U.S. Citizenship
and Immigration
Services



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Date **OCT 03 2012**

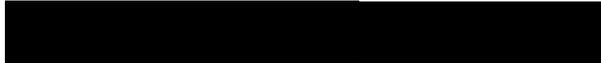
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

PETITIONER:



PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

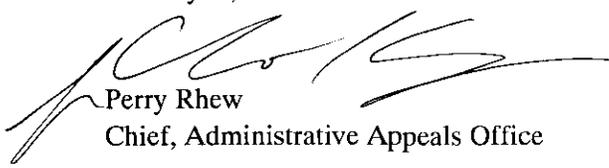
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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;

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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:

(a)(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.

* * *

(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[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* 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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States without inspection, admission or parole in December 1998. On February 2, 2010, the petitioner filed the instant Form I-918 U petition. On October 8, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On May 11, 2011, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

In support of his Form I-918 U petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) signed by [REDACTED] Fresno County, California Sheriff's Department (certifying official). At Part 3.1 the certifying official identifies the criminal activity of which the petitioner was a victim as domestic violence. At Part 3.3, the statutory citations for the criminal activity being investigated or prosecuted are listed as sections 273.5 and 243(e)(1) of the California Penal Code (CPC). At Part 3.5, the certifying official describes the criminal activity being investigated and/or prosecuted and the involvement of the petitioner as:

██████████ is the mother of [the petitioner] and she has been a long time victim of Domestic Battery while she resided with her husband ██████████ in Mexico. When she accompanied him to the U.S., her husband continued with his pattern of abuse and ultimately she had to file numerous emergency protective orders to save her life and her children. Some of the acts of domestic violence ██████████ suffered included threats of death and deportation, being beaten while she was pregnant, being hit in front of her children, pulling her hair until she hit the ground, [and] being assaulted with a knife and a gun. She is currently estranged from her husband and has not seen him since October 2003.

At Part 3.6, the known injuries to the petitioner are listed as:

[The petitioner] witnessed the domestic violence and had to get involved to defend his mother. [The petitioner] stopped his step father from stabbing his mother and also from being shot by his step father. [The petitioner] suffered from emotional and psychological abuse. He would get depressed when he witnessed how his mother was treated which caused him to experience low self-esteem. He feared to leave his mother and siblings alone with his step father because he knew his step father could harm them.

The certifying official notes in Part 4 of the Form I-918 Supplement B that the petitioner possesses information concerning the criminal activity, and that he cooperated with police officers by reporting the criminal conduct. The record also contains several temporary restraining orders obtained by the petitioner's mother against the petitioner's stepfather, at least one of which names the petitioner and his siblings as protected persons.

In his declaration, dated March 25, 2011, the petitioner describes years of abusive behavior by his stepfather against him, his mother and his family. He details how he and his brother were hit by ██████████ when they tried to defend the petitioner's mother. He states that he, his mother and his siblings were physically and verbally abused by ██████████ and he witnessed his mother get hit, stabbed, and pulled by the hair. He states that ██████████ would hit his mother even when she was pregnant and would pull her hair until she was down on the ground and then kick her. He states that whenever he and his brother would get involved ██████████ would yell at them and drag them from the house one by one. He states that one time ██████████ grabbed a knife from the kitchen and wanted to kill the petitioner's mother. He states that his brother tried to stop ██████████ and he ran to call the police. He states that ██████████ was arrested for the incident, but he was released shortly thereafter and began again to harass his mother. He states that his mother asked for help and filed several restraining orders. He states that there was another incident when ██████████ came to the house with a rifle and began shooting in the air, but that his uncle calmed down ██████████ and took the rifle away from him.

In an affidavit, dated December 29, 2004, the petitioner's mother states that ██████████ would hit her in front of the children, but that once she arrived in the United States she learned that she could call the police. She states that, in October 1999, she called the police after ██████████ pulled her hair and she thereafter obtained a protective order. She states that, in May 2001, ██████████ hit her again and

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

threatened to stab her with a knife that he had grabbed from the kitchen after she said she was going to call the police. She states that her older son took the knife from behind [REDACTED] and he let the knife go. She states that her other child called the police and [REDACTED] was arrested. She states that, after she gave birth to her last daughter, [REDACTED] was arrested in August 2001 after he pulled her hair and hit her. She states that on October 5, 2002, [REDACTED] beat her again and she was able to call the police, but [REDACTED] ran away before the police came. She states that in October 2003, [REDACTED] came to her house with a rifle and started shooting in the air. She states that her brother came out of the house, took the gun and told [REDACTED] to leave.

In a second affidavit, dated March 25, 2011, the petitioner's mother reiterates some details provided in her prior affidavit and adds that the petitioner would cry uncontrollably on occasions when [REDACTED] beat her or dragged him from the house. She states that the petitioner felt depressed and angry; had trouble functioning at home and school; and feared [REDACTED] would kill them. The petitioner's mother states further that the petitioner could not sleep and would wake in a cold sweat; he was paranoid and very irritable; he gets flashbacks; he became overwhelmed with anger and depression; he has deep and lasting scars; he isolates himself from others; and has anxiety attacks.

A psychological assessment written by [REDACTED] M.S., dated March 25, 2011, indicates that the petitioner reported that [REDACTED] was physically and mentally abusive to him, his mother and siblings. He reported that [REDACTED] was abusive from the beginning of the marriage until 2003; he repeatedly witnessed his mother being beaten, screamed at, put down, pulled around by the hair, stabbed and threatened with guns; the petitioner and his siblings were painfully beaten, screamed at, put down, cursed at and threatened with knives and guns; [REDACTED] repeatedly threatened to kill the petitioner, his mother and his siblings; from 1998 until 2003 there were more incidents of violent physical and mental abuse against the petitioner and his family, however the petitioner's mother or the children called the police on numerous occasions and his mother obtained orders of protection; and the last incident of domestic violence occurred in 2003 during which time [REDACTED] fired a rifle into the air.

The director determined that the petitioner failed to establish that he was the victim of qualifying criminal activity and suffered resultant substantial physical or mental abuse. The director noted that although the certifying official indicated that the petitioner was cooperative by reporting the criminal conduct, it was not evident which incident the petitioner witnessed and reported, as the petitioner had failed to provide any accompanying police reports. Although acknowledging that the petitioner was listed as a protected person on a restraining order, the director noted that the order did not hold evidentiary value because states often list minor children on orders of protection as a standard procedure.

On appeal, counsel for the petitioner asserts that the director erroneously concluded that the petitioner was not a victim despite the certifying official's contrary statements on the Form I-918 Supplement B. Counsel contends that the petitioner was a victim of domestic violence because he was involved in altercations between [REDACTED] and his mother and because he witnessed his mother's abuse for a period of 14 years. Counsel states that a bystander, such as the petitioner, who suffers unusually direct injuries as the result of witnessing a crime, is a direct victim of that crime. Counsel

contends that the petitioner has suffered substantial mental abuse as a result of witnessing [REDACTED] abuse of his mother and has, therefore, suffered substantial physical or mental abuse as a result of having been victimized by a qualifying crime.

Analysis

Upon *de novo* review of the record, we withdraw the director's decision to deny the petition.

The statutory citations listed at Part 3.5 of the Form I-918 Supplement B are sections 273.5 and 243(e)(1) of the CPC, which relate to corporal injury and battery of a spouse. The record contains temporary restraining orders against [REDACTED] that indicate he committed battery against the petitioner's mother, and which listed the petitioner and his siblings as protected persons. The Form I-918 Supplement B establishes that the police investigated [REDACTED] for domestic violence, which is a qualifying crime pursuant to section 101(a)(15)(U)(iii) of the Act.

The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by qualifying criminal activity. The director determined that the petitioner was not a victim because he was only a witness to his stepfather's abuse of his mother and did not suffer direct and proximate harm from the domestic violence. The director misinterpreted the definition of victim in this case. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence." *Id.* at 9.

In this case, the evidence in the record indicates that the petitioner was a direct victim of the criminal activity certified on the Form I-918 Supplement B because he was present during the crime of violence committed against his mother and directly and proximately harmed as a result. At Part 3.1, the certifying official listed the petitioner as a victim of, not a witness to, the certified crimes. At Part 3.6, the certifying official also stated that the petitioner intervened to stop his stepfather from stabbing his mother and being shot at by his stepfather. The certifying official's narrative at Part 3.5, the temporary restraining orders, and the petitioner and his mother's affidavits also document a long history of domestic violence perpetrated by [REDACTED] against the petitioner and his family. Overall, the evidence demonstrates that the petitioner was directly and proximately harmed by the certified criminal activity such that he is a victim as defined at 8 C.F.R. § 214.14(a)(14). The director's contrary decision is withdrawn.

We also withdraw the director's determination that the petitioner did not suffer substantial mental or physical abuse resulting from his victimization. The affidavits of the petitioner and his mother, the

certifying official's remarks at Part 3.6 of the Form I-918 Supplement B as well as the petitioner's psychological evaluation demonstrate that the petitioner suffered substantial abuse from being a victim of the certified crime. Accordingly, the petitioner has satisfied subsection 101(a)(15)(U)(i)(I) of the Act, and the director's contrary decision is withdrawn.

Conclusion

Although the petitioner has met the statutory eligibility criteria for U nonimmigrant status at section 101(a)(15)(U)(i) of the Act, all nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived before a petition may be approved. 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The petitioner filed a Form I-192 on February 2, 2010 that the director denied on May 11, 2011 solely on the basis of the denial of the Form I-918 U petition. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, as the ground for denial of the petitioner's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192 and the entry of a new decision on the Form I-918 U petition.

ORDER: The director's decision is withdrawn. Because the petitioner is statutorily eligible for U-1 nonimmigrant classification, the case is returned to the director for reconsideration of the Form I-192 and the issuance of a new decision on the Form I-918 U petition, which if adverse, shall be certified to the AAO for review.