

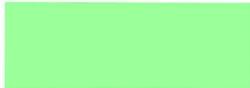


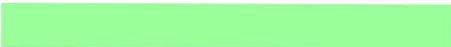
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 22 2013** 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:

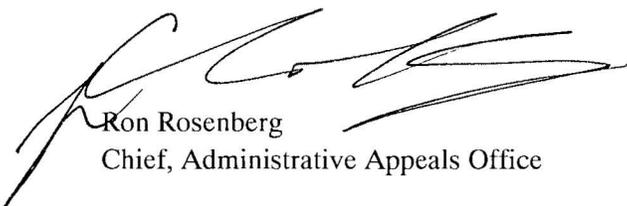


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that he had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The petition was denied accordingly. On appeal, counsel submits a brief and additional evidence.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

(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). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states, in pertinent part:

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

The term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. Citizenship and Immigration Services (USCIS) will assess 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. . . .

8 C.F.R. § 214.14(b)(1).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States in April, 2000, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918) on September 27, 2011, based on being the victim of extortion. The director determined that the petitioner did not establish that he had suffered substantial physical or mental abuse as the result of qualifying criminal activity, and the petition was denied accordingly.

On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he suffered substantial abuse as the result of qualifying criminal activity, USCIS made errors in its decision, and the U visa provisions were made for people like the petitioner who helped with the investigation of the crime even though he was threatened.

Analysis

Counsel's claims and the evidence submitted on appeal do not overcome the basis for the denial of the petitioner's Form I-918 U petition. The record shows that the petitioner was the victim of extortion, but the petitioner has not established that he suffered substantial physical or mental abuse as a result of that crime. At Part 3.6 of the Form I-918 Supplement B, (U Nonimmigrant Status Certification), the certifying official listed the injury to the victim as a financial loss of \$4,792.00. In his September 13, 2011 affidavit, the petitioner recounted the extortion of which he was a victim, stating that his former employer paid him what was required under the law to maintain a government contract, but then forced the petitioner and other workers to pay back part of their paycheck. When the petitioner complained about this practice, his former employer threatened to turn him over to immigration officials. The petitioner also suffered injuries when he fell from a ladder while on the job. The petitioner stated that because of the mistreatment he faced at work, he suffered from constant fear of deportation, stress, and anxiety, and he began to have trouble sleeping and

headaches. He stated that he has been receiving treatment from Dr. [REDACTED] a Licensed Clinical Psychologist, since 2010 and has met with other psychologists and doctors. The petitioner claimed that he continues to suffer the consequences of the extortion because he is depressed, anxious, has trouble sleeping and gets constant headaches, and he still has physical injuries from his fall.

The petitioner submitted a psychological evaluation from [REDACTED] a clinical psychologist, dated July 10, 2011. Mr. [REDACTED] stated that the petitioner is on medication for physical ailments as a result of falling off the ladder. He noted that the petitioner recounted that he worked in a hostile environment where he was threatened and placed under constant fear of deportation. Mr. [REDACTED] reported that the petitioner feared for his safety during the investigation into the extortion, and that Dr. [REDACTED] has been treating the petitioner to address posttraumatic stress disorder (PTSD) and depression. Dr. [REDACTED] also found that the petitioner was suffering from mild to moderate depression. He noted that because of the chronic pain the petitioner suffers from as a result of his fall, his recovery from depression is likely to be long-term.

On appeal, in his second affidavit, dated February 13, 2013, the petitioner asserts that the extortion ruined his life. He notes that he feared for his life and feared deportation. The petitioner recounts that because of the mistreatment at work, he became depressed and began drinking alcohol, which eventually caused an end to his relationship with his girlfriend. He reports that during the investigation, he suffered from pain in his neck that he believes was due to stress and anxiety. In her affidavit, dated February 13, 2013, the petitioner's former girlfriend, [REDACTED] states that when she first met the petitioner, he was a very happy person, but that because of the extortion, he began drinking and became depressed.

On appeal, counsel also submits a second psychological evaluation by Mr. [REDACTED] dated January 15, 2013, in which he repeats much of the information from the first psychological evaluation. Mr. [REDACTED] notes that in his most recent assessment, he found that the petitioner is struggling with depression to a lesser degree than he was a year ago and that he suffers from mild anxiety.

The evidence in the record fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of his victimization. Counsel asserts that the petitioner suffers from neck and upper back pain as a result of anxiety induced by the extortion. Both the petitioner and Mr. [REDACTED] describe various physical ailments the petitioner suffers from, such as shoulder injuries, "two bad discs," and back and neck pain. However, the record shows that most of these injuries resulted from the petitioner's fall from a ladder at work; the relevant evidence does not link these injuries to the extortion. Mr. [REDACTED] originally noted that the petitioner reported that since his injury *from the fall*, he suffers pain. Psychological Evaluation dated July 10, 2010 at 4. Mr. [REDACTED] also indicated that the work related injuries from the fall occurred months after the investigation into the extortion began. *Id.* at 3, 5. In the Initial Evaluation Report dated April 6, 2010, Dr. [REDACTED] stated that the petitioner indicated that his sleep is moderately disturbed "since his injury." Initial Evaluation Report at 5. 8 C.F.R. § 214.14(a)(8). Similarly, the other ailments described in Dr. [REDACTED]'s evaluations appear to result from the petitioner's fall rather than his victimization from extortion.

The petitioner credibly described his fear and anxiety over being threatened with deportation, as well as his depression and his belief that the extortion ruined his relationship with his girlfriend and his life. We do not minimize the emotional effects of the events that the petitioner has endured; however, his and Ms. [REDACTED]'s statements are insufficient to demonstrate that the extortion caused the petitioner to suffer substantial mental abuse. Although Mr. [REDACTED] referred to Dr. [REDACTED]'s diagnosis of PTSD and depression, Mr. [REDACTED] himself only found that the petitioner was suffering from mild to moderate depression in his original assessment. In a brief letter dated September 1, 2010, Dr. [REDACTED] indicated that he was treating the petitioner and that a psychological evaluation would be performed on October 5, 2010, but a copy of that evaluation was not submitted. In his second evaluation, Mr. [REDACTED] notes that the petitioner suffers from mild anxiety, but his depression has improved, and the petitioner indicated that his pain on a scale of one to 100 was seven.

In her brief, counsel contends that U nonimmigrant classification was intended to benefit people like the petitioner who help law enforcement with their investigation even if they are threatened. While helpfulness to law enforcement is one requirement, in order to show eligibility for U nonimmigrant status, a petitioner must meet all of the requirements of section 101(a)(15)(U)(i) of the Act. Counsel further asserts that the director made several errors in his decision dated December 19, 2012. Although the director cited to incorrect dates in that decision, this oversight has not prejudiced the petitioner. The AAO has reviewed the psychologist's assessments, the petitioner's and Ms. [REDACTED]'s affidavits, and the other relevant evidence on appeal, and as explained above, the preponderance of the relevant evidence does not show that the petitioner has suffered substantial physical or mental abuse as the result of his victimization under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

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 not been met.

ORDER: The appeal is dismissed. The petition remains denied.