

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 13 2014** 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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The decision dismissing the appeal shall be affirmed and the underlying petition will remain denied.

Pertinent Facts and Procedural History

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner filed a frivolous asylum application and is barred from receiving any benefit under the Act. The director also denied the petition because the petitioner did not meet the requirements under 8 C.F.R. § 214.14(b) for U nonimmigrant status and she is inadmissible. We affirmed the director's decision, noting that the petitioner is barred from receiving any benefit under the Act, including U nonimmigrant status, because she filed a frivolous asylum application. In addition, we noted that the petitioner failed to establish that she suffered substantial physical or mental abuse as a result of qualifying criminal activity and her grounds of inadmissibility had not been waived. The petitioner, through counsel, filed a motion to reopen our decision and submitted additional evidence.

On motion, counsel claims that because the "frivolous asylum bar pre-dates VAWA, and Congress did not contemplate a conflict between two policies," the director "has the authority to eliminate the application of the frivolous asylum bar where all other U visa requirements have been met." In addition, counsel claims that the petitioner has suffered substantial physical or mental abuse as a result of being a victim of domestic violence. In support of his claims, counsel submits a brief, a psychological evaluation, and additional evidence. As the petitioner, through counsel, has submitted new facts supported by documentary evidence, the motion to reopen will be granted. *See* 8 C.F.R. § 103.5(a)(2).

Analysis

As the applicable law, facts and procedural history were adequately documented in our dismissal of the appeal, they shall not be repeated here. Rather, this decision will focus on the assertions in counsel's brief that was filed in conjunction with this motion to reopen.

On motion, counsel does not contest that the petitioner is subject to the frivolous asylum bar but instead focuses on the intent of Congress when creating the U nonimmigrant classification. Counsel claims that the "regulations do not state that a prior frivolous asylum finding will bar a grant of U visa status" and if the petitioner meets the four eligibility requirements for U nonimmigrant status, "a U visa grant should cancel the effect of the frivolous asylum bar until Congress or the agency creates law directly addressing this issue." In the alternative, counsel contends that the petitioner's misrepresentation in her asylum application can be waived.

Section 208(d)(6) of the Act states:

If the [Secretary of Homeland Security] determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The record shows that on February 12, 2002, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal. On March 2, 2005, an immigration judge determined that the petitioner had knowingly filed a frivolous asylum application after proper notice of the consequences and ordered the petitioner removed to Jordan. On June 26, 2006, the Board of Immigration Appeals (Board) dismissed the petitioner's appeal. On January 26, 2009, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) denied the petitioner's petition for review of the Board's decision. *Haniyah v. Mukasey*, 310 Fed.Appx. 190 (9th Cir. 2009) (unpublished).

The record shows that pursuant to section 208(d)(6) of the Act, the petitioner is barred from ever receiving any benefits under the Act. The petitioner, through counsel, does not contest the frivolous asylum bar finding, and the Board and Ninth Circuit upheld the immigration judge's determination that the petitioner knowingly made a frivolous application for asylum. Counsel's claims have been considered, including his assertion that when enacting section 208(d)(6) of the Act, Congress did not contemplate the impact that the bar would have on individuals seeking U nonimmigrant status. However, we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). In addition, the bar for frivolous asylum applications at section 208(d)(6) of the Act cannot be waived. As such, the petitioner is barred from receiving U nonimmigrant status under section 101(a)(15)(U) of the Act because she is subject to section 208(d)(6) of the Act.

Regarding the petitioner's failure to establish that she suffered substantial abuse resulting from her being the victim of qualifying criminal activity, counsel submits a psychological evaluation, dated April 9, 2012, that he states was mistakenly omitted from the appeal filing. The evaluation notes, in part, that the petitioner suffers from Post Traumatic Stress Disorder (PTSD) resulting from her abusive relationship to her father. The petitioner has established that she suffered substantial abuse and our prior determination is withdrawn. However, she remains inadmissible to the United States and her grounds of inadmissibility have not been waived.

Conclusion

The petitioner's motion does not establish any error in our prior decision. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act and her petition must remain 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). Here, that burden has not been met.

ORDER: The motion is granted. The appeal remains dismissed and the petition remains denied.