U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]
C/O HASAN SHAFIQULLAH
THE LEGAL AID SOCIETY
199 WATER ST., 3RD FL.
NEW YORK, NY 10038

Date: DEC 19 2014 Office: VERMONT SERVICE CENTER FILE: A[redacted]
EAC[redacted]

IN RE: PETITIONER: [redacted]

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:

HASAN SHAFIQULLAH
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199 WATER ST., 3RD FL.
NEW YORK, NY 10038

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.

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, a decision it affirmed on motion to reopen. The matter is again before the AAO on a second motion to reopen. The motion will be granted. The prior decisions dismissing the appeal shall be withdrawn and the matter will be returned to the director for entry of a new decision.

Applicable Law

Section 101(a)(15)(U) of the Immigration and Nationality Act (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[.]

Witness tampering is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) 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 eligibility requirements for U nonimmigrant classification are further explicated 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;
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> * * *

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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in June 2009 without inspection, admission or parole. On November 5, 2012, the director denied the Petition for U Nonimmigrant Status (Form I-918 U petition), stating that the petitioner did not establish she had suffered substantial physical or mental abuse as the result of being the victim of witness tampering. We affirmed the director's decision, noting that neither the petitioner nor the social worker, Wanjuri Hawkins, probatively discussed the effects of the victimization on the petitioner's physical and mental health. The petitioner, through counsel, filed a motion to reopen our decision. We granted the motion but ultimately affirmed the director's decision because the psychological evaluation prepared by Dr. Giselle Aguilar Hass did not directly attribute the petitioner's mental health problems to the certified criminal activity of witness tampering. The petitioner, through counsel, has filed a second motion to reopen and submits a new letter from Dr. Hass that discusses her previously-submitted evaluation as well as our prior decision on the petitioner's first motion.[1] The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2).

Analysis

We conduct *de novo* review of the record and on second motion the petitioner has overcome the basis for the denial of her U petition.

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[1] Dr. Hass's letter is dated March 22, 2014, after we issued our March 5, 2014 decision on the petitioner's first motion. We have highlighted only certain portions of Dr. Hass's letter in this decision but reviewed it in its entirety.

Substantial Physical or Mental Abuse

In her letter submitted on motion, Dr. Hass reports that the petitioner had a difficult childhood and the experiences of working at [redacted], which included sexual harassment and exploitation, extortion, dangerous working conditions and coercion, aggravated her mental health problems. Dr. Hass notes that the rigid controls inherent in the witness tampering significantly harmed the petitioner's mental health because of her vulnerable situation of being told to lie to Department of Labor (DOL) officials and having no redress to stop or escape from the coercive actions and behaviors of her employer. Dr. Hass attributes the petitioner's Post Traumatic Stress Disorder (PTSD), in part, to the coercive practices employed by the owner of [redacted] during the investigation and prosecution of him by DOL officials. Dr. Hass states that the petitioner suffers from a psychologically deteriorating state as a result of her employment at [redacted] and the abusive relationship she had with the entity's owner.

The record shows that the criminal activity perpetrated against the petitioner began when the petitioner was 18 years old, the consequences of which exacerbated the petitioner's already fragile psychological profile as the petitioner had already experienced and would continue to experience at [redacted] acts of violence, coercion and intimidation. *See* 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of pre-existing conditions). The preponderance of the evidence demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of the qualifying crime of witness tampering, as required by section 101(a)(15)(U)(i)(I) of the Act and under the standards and factors explicated in the regulation at 8 C.F.R. § 214.14(b)(1). We, accordingly, withdraw our prior determinations to the contrary.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her 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 Form I-918 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 an Application For Advance Permission to Enter as Nonimmigrant (Form I-192) in order to waive a ground of inadmissibility. 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).

In this case, the director determined the petitioner was inadmissible under sections 212(a)(6)(A) and 212(a)(7)(B)(i)(I) of the Act without analysis and denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192,* dated November 5, 2012. Section 212(a)(6)(A)(i) of the Act renders inadmissible

any alien present in the United States without admission or parole and section 212(a)(7)(B)(i)(I) of the Act renders inadmissible any nonimmigrant not in possession of a valid passport. 8 U.S.C. §§ 1182(a)(6)(A)(i), (a)(7)(B)(i)(I). The petitioner admits on her Form I-918 U petition to have entered the United States in June 2009 without being inspected, admitted or paroled, and she has not submitted evidence that she has a valid passport. She is, therefore, inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act. On her Form I-918 U petition, the petitioner stated that she has no current immigration status in the United States.

Because the director denied the petitioner's waiver request based solely on the denial of her Form I-918 U petition and the petitioner has overcome this basis for denial on motion, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

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 statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on motion, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The motion is granted. The July 29, 2013 and March 5, 2014 decisions of the AAO are withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.