**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 two motions to reopen. The matter is again before the AAO on a motion to reconsider. 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 The prior decisions dismissing the appeal shall be withdrawn and the matter will be returned to the director for entry of a new decision.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) of the Act, 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 Honduras who claims to have entered the United States on January 31, 2005 without being inspected, admitted or paroled. 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, filed a second motion to reopen and submitted a new letter from Dr. Hass that discussed her previously-submitted evaluation as well as our prior decision on the petitioner's first motion. We granted the motion but ultimately affirmed the decision dismissing the appeal because the evidence failed to establish that the petitioner suffered substantial mental abuse as a result of her being a victim of witness tampering. The petitioner has met the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

*Analysis*

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

Substantial Physical or Mental Abuse

The petitioner states through counsel that she suffers from depression as a result of the trauma she suffered at [redacted], which also aggravated her pre-existing mental health conditions that resulted from growing up in a violent and abusive household where she witnessed her alcoholic father physically abuse her mother and sisters, and experienced her own physical and sexual abuse at the hands of her father. The petitioner asserts that given the abuse she suffered from and witnessed within her family unit, she was susceptible to abusive authority figures, like the owner of [redacted], and did not have the coping mechanisms to deal with her employer's coercive tactics. The petitioner states that we should give due weight and consideration to the fact that the specific acts constituting witness tampering, such as being forced to lie the Department of Labor (DOL) officials and participate in a cover-up of criminal acts, happened over a period of several months and within the context of the petitioner's already compromised psychological profile.

In our prior decisions, we determined that the evidence failed to demonstrate that the petitioner suffered substantial abuse as the victim of witness tampering because, in part, the record did not sufficiently demonstrate that the petitioner's dysthymic disorder was "a result of having been a victim of criminal activity described in [section 101(a)(15)(U)(iii) of the Act]." *See* section 101(a)(15)(U)(i)(I) of the Act. We now withdraw our prior determinations on this issue. The petitioner has established the requisite connection between the coercive actions of the witness tampering and the aggravation of the petitioner's pre-existing mental health issues, as both her employment and her childhood involved acts of violence, coercion and intimidation over a period of time. *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).

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 section 212(a)(6)(A) 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. 8 U.S.C. § 1182(a)(6)(A)(i). The petitioner admits on her Form I-918 U petition to have entered the United States on January 31, 2005 without being inspected, admitted or paroled. She is, therefore, inadmissible under section 212(a)(6)(A)(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 10, 2013, November 13, 2013, and April 10, 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.