



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-S-

DATE: NOV. 30, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Acting Director, Vermont Service Center, denied the petition. The Petitioner filed an appeal of the Director's adverse finding, and we dismissed the appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

I. APPLICABLE LAW

Section 101(a)(15)(U) of 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[.]

Felonious assault 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:

(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[.]

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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States in June 2005 without inspection, admission or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, and a Form I-918 Supplement B, U Nonimmigrant Status Certification, on September 30, 2011. The Director denied the petition, finding that the Petitioner failed to meet the eligibility criteria at sections 101(a)(15)(U)(i)(I) – (III) of the Act (substantial physical or mental abuse, possession of information, and helpfulness to law enforcement) because he was not the victim of a qualifying crime. On appeal, we withdrew the Director's decision that the Petitioner was not a victim of a qualifying crime, did not possess information about the crime, and was not helpful to law enforcement in the investigation of prosecution of the crime. However, we affirmed the Director's

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decision that the Petitioner did not suffer substantial physical or mental abuse as a result of having been a victim of a qualifying crime. The Petitioner timely filed the instant motion to reopen and motion to reconsider.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits a brief and additional evidence to establish that he suffered substantial physical and mental abuse as a result of his victimization. We review these proceedings *de novo*.

III. ANALYSIS

A. Qualifying Criminal Activity

In our previous decision, we stated that the evidence established that the crime of aggravated assault under Texas Penal Code section 22.02 was investigated or prosecuted, and that the felonious assault was a qualifying crime under section 101(a)(15)(U)(iii) of the Act. The record before the Director contained a Form I-918 Supplement B signed by [REDACTED] of the [REDACTED] Texas, Police Department (certifying official) on September 2, 2011. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official listed Texas Penal Code sections 15.01, 22.02, and 22.07 (criminal attempt, aggravated assault, and terroristic threat, respectively) as the statutory citations for the criminal activity that was investigated or prosecuted.

In his declaration before the Director, the Petitioner indicated that at a gas station he reluctantly agreed to give a woman a ride, and after she got into his car, a man jumped onto the hood of his car and began yelling at the woman, and demanding that they both get out of the car. The Petitioner recounted that the man ripped the car's windshield wipers off, and used one of them to hit the windshield so hard it began to break. The Petitioner stated he called 911 and when the police arrived, the officers arrested the man who was on top of his car, and the woman in his car, and that a police officer hit him, threw him to the ground, and handcuffed him. He stated that after he answered some questions for the police, they let him go. The police report identified the man and woman as a common-law couple, and indicated that the man, C-G-¹, was arrested for "terroristic threats – family" and criminal damage to the Petitioner's car.

B. Substantial Physical or Mental Abuse

On appeal, we reviewed the statement of the Petitioner, the Form I-918 Supplement B, and the psychological report from [REDACTED] a doctor of psychology, and determined that the

¹ Name withheld to protect the individual's identity.

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Petitioner did not suffer substantial injury resulting from his having been a victim of the felonious assault. We noted that the evidence discussed in general terms the petitioner's anxiety, depression and post-traumatic stress disorder (PTSD), but that the Petitioner's statement included no details about the mental harm suffered as a result of the incident. We also stated that [REDACTED] did not sufficiently describe any connection between the mental health issues and the felonious assault by C-G- against the Petitioner. We further stated that [REDACTED] report showed that the Petitioner's depression, anxiety and PTSD resulted from his interactions with the police following the incident. We determined that the record did not establish the incident with the police had occurred, and that any such incident was not the qualifying criminal activity certified by the Form I-918 Supplement B, and could not be considered to establish the substantial harm.

On motion, the Petitioner asserts that he suffered substantial mental abuse and submits a new personal declaration and a supplemental evaluation from [REDACTED]. In his statement, the Petitioner describes his panic and fear when the man on the hood of his car punched on his windshield with such force that it started to break. He states that he felt trapped, and thought that if the windshield broke, he would be cut by the glass and the man would kill him. He explains that when the police hit him, threw him on the ground, and handcuffed him, he again became afraid for his life. The Petitioner indicates that a witness corroborated his version of the events. The Petitioner explains that the felonious assault has completely changed him in that he now lives in constant fear, avoids and mistrusts people and law enforcement, locks doors obsessively, panics easily, and has flashbacks and nightmares in which he relives the event.

[REDACTED] indicates that he re-evaluated the Petitioner after two recent visits, performed a battery of tests, and concludes that the Petitioner continues to suffer PTSD, major depressive disorder, and generalized anxiety as a result of the criminal assault from the man on the hood of his car and the police brutality the Petitioner claims followed the incident. [REDACTED] indicates that the Petitioner's insomnia and interrupted sleep pattern put him at increased risk of suicide, that major depressive disorder is associated with high mortality, that anxiety and worry impair the Petitioner's ability to perform daily living functions, and that the Petitioner is hypervigilant and distrustful.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

A full review of the evidence does not establish that the Petitioner has suffered substantial physical or mental abuse resulting from the felonious assault by C-G- under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). Neither the Form I-918 Supplement B nor the petitioner's declarations indicate that the Petitioner suffered any physical injury as a result of the incident. The petitioner states in general terms that he is withdrawn, does not socialize, lives in constant fear, and has flashbacks and nightmares. However, he did not include a probative, detailed description of how the criminal activity has impacted his daily life, his interactions with others, and his overall well-

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being. Similarly, [REDACTED] states that the Petitioner has reduced ability to function in his daily life, but she does not indicate that the Petitioner can no longer work, support himself, function effectively, or that his symptoms are permanent. While [REDACTED] indicates that the Petitioner's diagnoses put him at increased risk of mortality and suicide, she does not describe the Petitioner as suicidal. She instead concluded that the Petitioner's conditions are treatable and can improve based on a treatment plan that includes the development of coping skills, and finding ways for the Petitioner to improve his self-esteem and self-confidence.

While the evidence discusses in general terms the petitioner's anxiety, depression and PTSD, it does not cite specific instances of serious or permanent psychological harm or describe in particular detail the severity of the harm manifested in the Petitioner's life. Accordingly, the Petitioner has not demonstrated that he suffered substantial physical or mental abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not overcome our previous determination. He has not established that he suffered substantial physical or mental abuse resulting from qualifying criminal activity. The Petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act.

The Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-S-*, ID# 14573 (AAO Nov. 30, 2015)