



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

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

MATTER OF M-J-O-D-

DATE: SEPT. 2, 2015

MOTION TO RECONSIDER OF 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 Director, Vermont Service Center, denied the petition. The Petitioner appealed the decision and we dismissed the appeal. The matter is now before us on a motion to reconsider. The motion is granted, our previous decision is affirmed, and the petition is denied.

The Director determined that the Petitioner did not establish that he suffered substantial physical and mental abuse as a result of a qualifying crime. The petition was denied accordingly. On motion, the Petitioner submits a brief but no additional evidence.

**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);

...

Felonious assault 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[.]

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. RELEVANT FACTS AND PROCEDURAL HISTORY

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. The Petitioner, while working as a security guard, was in an altercation where he was punched and kicked multiple times, and he was injured to the extent that he was bleeding from his forehead and experiencing severe pain to his upper torso and head, but declined to be taken to the hospital.

On appeal, the Petitioner submitted an additional personal affidavit clarifying that he declined to be transported to the hospital on the date of the assault because he did not believe that he would be able to afford treatment. The Petitioner also submitted his 2012 federal income tax return showing his low income. Our previous decision considered the evidence submitted, but agreed with the Director that the Petitioner did not demonstrate that he suffered substantial physical or mental abuse as a result of qualifying criminal activity, and therefore, dismissed the appeal. The Petitioner filed a motion to reconsider our previous decision and submitted a brief but no additional evidence in support of the motion to reconsider.

(b)(6)

### III. ANALYSIS

We review these proceedings *de novo*. A full review of the record does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the certified criminal activity.

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 evaluates, 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. Physical Abuse Suffered by the Petitioner

The Petitioner submitted a personal affidavit dated October 20, 2012, wherein he recounted that he was repeatedly punched and kicked during the assault while other individuals held him down. The Petitioner also indicated that he was treated by paramedics at the scene, but did not further describe his injuries or indicate how he was affected by the incident. Both the Form I-918 Supplement B and the police report briefly state that the Petitioner was bleeding from his forehead and that he complained of severe pain to his upper torso and head. The Petitioner also provided a letter from his employer, [REDACTED], stating that the Petitioner was severely injured during the incident at the restaurant and a letter from his friend, [REDACTED] in which [REDACTED] indicated that the Petitioner was "physically beat" by the perpetrators of the crime. The Petitioner submitted an additional affidavit on appeal in which he described his physical injuries, stating that he was hit several times in the head and torso and was left with two bleeding wounds on his head. The Petitioner asserted that he declined to be transported to the hospital because he did not have medical insurance and could not afford to pay for emergency care out of pocket; he submitted his 2012 federal income tax return to document his limited funds.

With respect to whether the Petitioner suffered substantial physical abuse, although the Petitioner provided evidence regarding the injuries he suffered as a result of the qualifying criminal activity, he did not detail the severity of those injuries. On motion, the Petitioner asserts that we overemphasized the fact that he did not seek further medical attention for his injuries and, in particular, that we did not adequately credit the financial difficulty such further medical attention would have caused him. We remain sensitive to the Petitioner's economic situation that may have precluded him from obtaining further medical attention but the other evidence submitted by the Petitioner did not contain detailed and specific evidence concerning his physical injuries. Specifically, the police report in the record only briefly states that the Petitioner was bleeding from his forehead and that he complained of severe pain in his head and torso. When viewed in its totality, the preponderance of the relevant evidence does not establish the severity of the Petitioner's physical injuries to demonstrate that the Petitioner suffered substantial physical abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act.

#### B. Mental Abuse Suffered by the Petitioner

The evidence referenced above also contains statements concerning the Petitioner's mental state following the incident. The declaration from [REDACTED] stated that the Petitioner is in "constant fear for his life." The affidavit from [REDACTED] stated that, since the incident, the Petitioner continues to be "tense, worried,

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and somewhat fearful.” The Petitioner’s wife, [REDACTED] wrote a letter stating that the Petitioner has not been the same since the incident and lives in constant fear of being attacked. [REDACTED] lamented the lasting psychological damage that the assault caused to the Petitioner, and indicated that the couple’s financial situation did not allow for the Petitioner to get help for his symptoms. The Petitioner also stated in his affidavit submitted on appeal that the incident caused him severe psychological suffering and that he cannot afford professional counseling.

The evidence submitted does not establish that the Petitioner suffered substantial mental abuse or impairment to the Petitioner’s mental soundness as a result of his victimization. As stated in our previous decision, the Petitioner does not discuss his mental harm in detail in his personal statement nor does he sufficiently describe the connection between any psychological trauma and the incident that occurred on April 15, 2012. In addition, the other evidence in the record does not describe the injury to the Petitioner’s mental state in sufficient detail to support a finding that he suffered substantial mental abuse. For example, [REDACTED] states generally that the Petitioner “has been extremely cautious and careful . . . tense, worried, and somewhat fearful,” but his statement provides no specific or detailed information concerning the Petitioner’s emotional or mental well-being. Similarly, [REDACTED] declaration lacks detail about how the Petitioner is more fearful and vigilant since the incident. [REDACTED] also stated that the Petitioner is fearful, but she also provides no details concerning how that fear or any other psychological issue has affected the Petitioner.

On motion, the Petitioner states that our previous decision dismissed the affidavits from his friends and family because they are not mental professionals and again notes the Petitioner’s financial limitations in seeking professional mental help. Our previous decision did not state that the Petitioner failed to establish that he suffered substantial mental abuse merely because he did not obtain an evaluation or diagnosis from a mental health professional. Instead, our previous decision noted that the evidence in the record was insufficiently detailed to establish by the preponderance of the evidence that the Petitioner suffered substantial mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act. On motion, the Petitioner does not provide additional evidence describing in greater detail how he suffered substantial mental abuse.

We are sympathetic to the Petitioner’s situation, however, the Petitioner submitted no additional details concerning the effect of the criminal activity upon his physical or mental state. Therefore, we affirm our previous decision holding that the record as currently constituted does not demonstrate that the Petitioner suffered substantial physical or mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act.

#### IV. 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. Accordingly, the motion will be dismissed.

**ORDER:** The appeal remains dismissed and the underlying petition remains denied.

Cite as *Matter of M-J-O-D*, ID # 14092 (AAO Sept. 2, 2015)