



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

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

MATTER OF A-E-G-

DATE: SEPT. 2, 2015

APPEAL OF VERMONT SERVICE CENTER 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 (INA, or the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition because the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity and consequently was ineligible for U classification. On appeal, the Petitioner submits a brief and 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)[.]

....

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 explained 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 August 2004. The Petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on May 24, 2013. The Director issued a request for evidence (RFE) that the Petitioner suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 U petition and the accompanying Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The Petitioner timely appealed the denial of the Form I-918.

On appeal, the Petitioner states that the evidence of record demonstrates that he suffered substantial abuse as a result of a qualifying criminal activity.

(b)(6)

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief on appeal, 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 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).

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Commander/Administration of the [REDACTED] Sheriff's Office (certifying official), on January 17, 2013. At Part 3.1 of Form I-918 Supplement B, the certifying official lists the criminal act that the Petitioner was a victim of as "Felonious Assault". At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner told the reporting deputies that he sustained no injuries. The Incident/Criminal Report describing the incident indicates that the person identified as "Victim 1" had an "Apparent Minor Injury" but is redacted and does not identify the Petitioner as Victim 1. The narrative attached to the Incident/Criminal Report indicates that the Petitioner was not visibly injured, did not complain of any injuries, and refused any medical treatment. The Petitioner and his friend, in their victim statements, which were also attached to the Incident/Criminal Report, both reported that they were hit multiple times.

In his first declaration, the Petitioner stated that, on [REDACTED], 2009, when he was [REDACTED] years old, he was assaulted by a group of young males who appeared to be gang members. Individuals in the group asked the Petitioner and his friend if they were gang members and started to harass them when the Petitioner answered no. He stated that the group of 10 to 11 people demanded his money and his shoes and physically assaulted him when he refused. He stated that he was punched several times and kicked when he fell to the ground. The group left when a passerby stopped to help the Petitioner and when the police arrived. The Petitioner stated that, as the attackers fled, they threatened to beat him and his friend up if they reported the crime to the police. The Petitioner stated that his cheek became swollen and he was in pain for a week. There are slight variations between the Petitioner's account of events as stated in his personal declarations and the account of events contained in the Incident/Criminal Report but these differences are not material to the Petitioner's claim.

In addition, the Petitioner stated that the worst part of the attack was the emotional harm. The Petitioner described being afraid the suspects were going to retaliate against him for talking to the police and that he stopped going to school for a week. He stated that he no longer walked home from school and still feels anxious when he sees people that remind him of the gang members. The Petitioner further recalled that he had a hard time focusing in school and trouble sleeping and that, although it has gotten better with time, he still remembers the incident. In his second declaration submitted in response to the RFE, the Petitioner stated that he did have visible injuries because his cheek was red and swollen, and he is not sure why the police report states otherwise. He explained

(b)(6)

that he declined medical treatment because he was afraid that the police officer would immediately take him to the hospital and he did not want to add a medical bill to his mother's worries who was already struggling financially. The Petitioner recounted that he developed several bruises throughout his body the next day. He also described being fearful about going to school, testifying against the suspect, and of any retaliation by the people involved in his assault. The Petitioner further described growing up in an abusive household where he witnessed his alcoholic father punch and kick his mom and indicated that this exacerbated the negative emotions that he felt after the attack.

The Petitioner also submitted a joint letter from Josh Rose, a licensed clinical social worker with [REDACTED] and [REDACTED] the attending associate clinical social worker with [REDACTED]. The letter states that Mr. [REDACTED] and Ms. [REDACTED] met with the Petitioner for two hours on March 2, 2013. Based on his test results and their clinical observations, Mr. [REDACTED] and Ms. [REDACTED] concluded that the Petitioner suffered from post-traumatic stress disorder and depression as a result of the 2009 assault. According to the letter, the Petitioner continues to suffer from sleep disturbances, diminished concentration, hypervigilance, and "strong episodes of anger." The Petitioner himself, however, did not mention or describe in detail these or any other continuing symptoms in his personal declarations.

On appeal, the Petitioner submits a brief stating that his personal declarations provide detailed descriptions of the ongoing nature of the physical and emotional harm he suffered. He asserts that the Director erred in relying heavily on the Incident/Criminal Report and the Form I-918 Supplement B without giving due consideration to the other evidence demonstrating substantial emotional harm. The record also contains evidence of severe injuries the Petitioner's mother suffered in January 2014 at her place of employment. The Petitioner asserts that watching his mother cope with her injury and the increased stress of his financial responsibilities has compounded his emotional stress. While the injuries suffered by the Petitioner's mother were severe and understandably add to his emotional distress, the evidence submitted is not relevant to the Petitioner's Form I-918 petition as it did not result from the qualifying criminal activity. He further asserts that the assault exacerbated a pre-existing trauma stemming from his difficult childhood and this is evidenced by the report from licensed mental health professionals.

On appeal, the Petitioner resubmits evidence submitted with the Form I-918 and adds a newspaper article chronicling the dangers of the location where the Petitioner and his friend were attacked several years earlier. Although the Director's denial focused on the Petitioner's physical injuries and did not sufficiently address the Petitioner's claim of substantial emotional harm, the Director's ultimate determination is correct. The Petitioner does not provide probative details about the severity of the abuse and its connection to any ongoing mental health issues. As the Petitioner has not adequately demonstrated that the incident certified by the [REDACTED] California Police Department resulted in substantial abuse under the pertinent definition and relevant factors at 8 C.F.R. §§ 214.14(a)(8); (b)(1), the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial abuse that resulted from a qualifying criminal activity.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought 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 (AAO 2010). Here, that burden has not been met.

ORDER: The order is dismissed.

Cite as *Matter of A-E-G-*, ID# 13415 (AAO Sept. 2, 2015)