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

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

MATTER OF E-V-G-

DATE: SEPT. 2, 2015

MOTION 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* section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U). The Acting Director, Vermont Service Center, denied the petition. The Petitioner filed a timely appeal. We dismissed the appeal in a decision dated February 25, 2015. The matter is now before us on motion. The motion will be denied.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, because the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of being the victim of qualifying criminal activity. We dismissed the Petitioner's appeal, finding no error in the Director's decision. Additionally, beyond the Director's decision, we concluded that the Petitioner had not established that he had been helpful, was being helpful, or was likely to be helpful in the investigation or prosecution of the qualifying criminal activity upon which his petition was based because Part 4 of the Form I-918 Supplement B, U Nonimmigrant Status Certification, was blank. Our prior decision is incorporated here by reference.

On motion, the Petitioner submits a brief, an updated Form I-918 Supplement B, a letter from a Licensed Professional Counselor, and copies of previously submitted evidence. Although the Petitioner has met the requirements of a motion to reopen, the new evidence he presents is sufficient to overcome only one of the two grounds for our previous dismissal. Additionally, the Petitioner has not met the requirements of a motion to reconsider in that the Petitioner did not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision.

The Petitioner submits on motion an updated Form I-918 Supplement B signed on March 30, 2015 by [REDACTED], Sheriff, [REDACTED] Sheriff's Office, [REDACTED] Washington (certifying official). At Part 4.2, the certifying official indicates that the Petitioner has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity listed at Part 3. At Part 4.5, the certifying official stated that the Petitioner "provided a statement detailing the assault and allowed photographs of the alleged injuries." Therefore, the Petitioner meets the statutory requirement of section 214(p) of the Act that he obtain a certification of helpfulness on the Form I-918 Supplement B and the regulatory requirement at 8 C.F.R. § 214.4(b)(3) that he demonstrate that he has been helpful, is being helpful, or is likely to be helpful to a certifying agency. However,

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because he has not overcome the remaining ground for our dismissal of his appeal, his motion is denied.

The Petitioner was the victim of an incident of domestic violence perpetrated by his former sister-in-law. The evidence does not establish that the Petitioner suffered substantial physical abuse as a result of the incident. On motion, the Petitioner asserts that we erred in finding that the injuries he incurred did not amount to substantial physical abuse. He argues that the incident involved serious violence and that he suffered substantial physical abuse when his former sister-in-law hit him in the face with a cellular telephone, causing small cuts on his mouth and nose. He alleges that, although he did not seek medical attention for financial reasons, he experienced pain from his injuries.

Additionally, the Petitioner states that his former sister-in-law hit the Petitioner's brother, broke the windshield of a vehicle, and behaved so violently that she had to be restrained by the Petitioner and his brother. The Petitioner also notes that his children, as well as his teenage nephew, were present and witnessed the incident, and that he feared for their safety. The Petitioner provides copies of previously submitted documents, including police reports, photographs, court records relating to charges against the Petitioner's former sister-in-law, a pre-trial Domestic Violence No-Contact Order for the Petitioner and his brother against the Petitioner's former sister-in-law, and the Petitioner's declarations.

Pursuant to the regulation at 8 C.F.R. § 214.14, our determination of whether the Petitioner suffered substantial physical abuse involves consideration of the severity and duration of the perpetrator's conduct, the nature and severity of the injury, and whether the Petitioner suffered permanent or serious harm to his health, appearance, or physical or mental soundness. As we noted in our previous decision, the Petitioner is not required to demonstrate that he sought medical attention for his injuries. However, the evidence in this case establishes that the Petitioner's injuries were minor and resulted from a single, brief, isolated incident. The police report from Officer [REDACTED] states that the Petitioner "sustained several small cuts on the left side of his face where he stated [his sister-in-law] had hit him with her cell phone." The report from Officer [REDACTED] notes "bleeding to both [the Petitioner and his brother] around their nose[s] and mouths." The police reports also note that the Petitioner's former sister-in-law was not armed during the incident. The accompanying photographs appear to show small cuts on the Petitioner's lip and nose, but do not establish any serious or lasting injury. Although the Petitioner emphasizes that children were present during the incident, the record does not indicate that they were harmed or placed in immediate threat of physical harm. Additionally, although the Petitioner asserts on motion that his former sister-in-law "was willing to use substantial force to hurt everyone around her," the evidence does not establish that she did so.

Furthermore, the Petitioner's own statements indicate that his injuries were minor. In the Petitioner's 2013 affidavit, he stated that his former sister-in-law "hit [him] with her cell phone, she hit [him] in the mouth which caused a cut to [his] lips." In his January 2014 affidavit, he stated that, in addition to being hit by the cellular telephone, he "was hit several times while trying to restrain" his former sister-in-law. In his June 2014 declaration, the Petitioner again mentioned his "bloody lip" but did not discuss any other injuries. The Petitioner does not indicate in any of his statements that he suffered significant pain, that his injuries affected his ability to function, or that they did not heal properly. Although the Petitioner's former sister-in-law behaved violently during the incident, the evidence of record does not support a finding that her conduct was part of a pattern of violence

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directed at the Petitioner, lasted for a long time, was particularly severe, or resulted in lasting or serious injury amounting to substantial physical abuse.

The evidence also does not demonstrate that the Petitioner suffered substantial mental abuse as a result of the domestic violence he experienced. The Petitioner claims on motion that he has experienced ongoing fear, anxiety, and depression as a result of the domestic violence of which he was a victim. He asserts that he fears for the safety of his family and moved to a new home to prevent his former sister-in-law from finding him. Additionally, the Petitioner indicates that he has suffered physical and psychological symptoms which interfere with his daily life. He alleges that his petition was improperly denied based on an incorrect assumption that, because he did not seek mental health treatment for several years after the domestic violence incident, the effects of the crime on his mental health were not substantial. He asserts that he has had trouble accessing free mental health services which are both available to men and provided in Spanish. Moreover, the Petitioner claims that we erred in concluding that the Petitioner's mental health problems were related to a variety of factors, not only the domestic violence he suffered, and that there was no evidence that the Petitioner's mental health issues were affecting his daily life. He also contends that his former sister-in-law was affiliated with a gang, which lent credibility to her threats against him and increased his depression and anxiety.

As evidence in support of his motion, the Petitioner submits a letter from [REDACTED] Licensed Professional Counselor, supplementing Ms. [REDACTED] previously-submitted mental health evaluation of the Petitioner. In her letter, Ms. [REDACTED] states that she considered the Petitioner's limited education and fear of returning to Mexico because it contributed to his "vulnerability and being predisposed to domestic violence," and that his knowledge of his former sister-in-law's gang affiliation made him "feel fragile" and his former sister-in-law's threats more credible. Additionally, Ms. [REDACTED] reports that the Petitioner's "life was dramatically affected by his fear of his sister-in-law." She explains that the Petitioner feared for the life of his family, returned from work to check on them, and moved in order to hide from his former sister-in-law. Ms. [REDACTED] first states that the Petitioner moved "multiple times" but she later states that he moved twice; in his January 2013 and January 2014 statements, the Petitioner mentioned one move. Ms. [REDACTED] also asserts that the Petitioner has had difficulty obtaining free counseling services because such services are reserved for women or are not available to Spanish speakers. Furthermore, Ms. [REDACTED] states that discussing the domestic violence of which he was a victim causes additional trauma for the Petitioner. She also contends that victims of trauma are unlikely to recover without mental health treatment, and that such victims' "worldview is one of pervasive fear and lack of safety. This affects all areas of [the Petitioner's] life and his ability to function."

Ms. [REDACTED] letter is new evidence, so it meets the requirements of a motion to reopen. However, even when considered in the aggregate, the evidence of record does not establish that the Petitioner has suffered substantial mental abuse as defined in the regulation at 8 C.F.R. § 214.14(b)(1). Furthermore, the Petitioner has not cited binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record.

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As previously discussed, the Petitioner was the victim of a single, brief, isolated incident resulting in minor physical injuries to the Petitioner, damage to a vehicle, and threats. When considered in light of the regulation, which requires evaluation of the nature, severity, and duration of both the conduct and the resulting injury, the evidence does not demonstrate that this singular incident of domestic violence resulted in substantial mental abuse. The incident occurred on June 14, 2008, over seven years ago, and there is no indication that the Petitioner or his family members have been victims of violence by the Petitioner's former sister-in-law, or anyone connected to her, since that date. The record indicates that the incident was related to the Petitioner's former sister-in-law's consumption of alcohol on the day it occurred rather than a pattern of abuse.

Although Ms. [REDACTED] states in her letter that the Petitioner "was directly threatened by his sister-in-law in 2011," the record contains no other information regarding this allegation, such as the nature and means of the threat, the date it occurred, whether it was credible, how the Petitioner reacted to the threat, and whether the Petitioner's former sister-in-law acted upon it. Additionally, even if the Petitioner did receive a threat from his former sister-in-law in 2011, there is no evidence in the record that he has received any threats or has otherwise been at risk of harm by his former sister-in-law in the past four years. Finally, although the Petitioner and Ms. [REDACTED] claim on motion that the Petitioner's former sister-in-law had ties to a gang, the record does not support a finding that this alleged association caused substantial mental harm for the Petitioner. The police records do not indicate that the Petitioner's former sister-in-law was affiliated with a gang, nor is there any evidence in the record that the domestic violence against the Petitioner was gang-related or that the Petitioner or his family have ever been at risk of gang violence.

Contrary to the Petitioner's assertions on motion, we do not require that the Petitioner seek counseling. We have considered the expert evaluation of Ms. [REDACTED] who diagnosed the Petitioner with depression, anxiety, and posttraumatic stress disorder. However, these diagnoses, on their own, are not sufficient to meet the substantial abuse standard. The record does not show that the Petitioner was the victim of severe or ongoing domestic violence, nor does it show that he suffered severe or permanent harm to his mental soundness as a result of the single incident he experienced. The evidence shows that the Petitioner feels fear and anxiety relating to the incident and that it was traumatic for him. His fear, anxiety, depression, and posttraumatic stress disorder caused him to move from his apartment due to a sense of danger for his family. Ms. [REDACTED] also indicated in her report, filed on appeal, that the Petitioner was suffering mental and physical symptoms of trauma, including, but not limited to, difficulty sleeping, nightmares, lack of interest in activities, and isolation from others. However, as we noted in our previous decision, the record does not indicate that the Petitioner's symptoms have prevented him from working, completing his daily responsibilities, caring or providing for his family, maintaining relationships with his family, or completing other necessary tasks. The Petitioner does not offer sufficient evidence on motion to demonstrate that our finding was in error.

As in all visa petition proceedings, the petitioner bears the burden of proving eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the motion is denied.

ORDER: The motion is denied. The decision of the Director is affirmed.

Cite as *Matter of E-V-G-*, ID # 14053 (AAO Sept. 2, 2015)