



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

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

MATTER OF A-E-G-

DATE: APR. 26, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p). 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status. The Director concluded that the Petitioner did not establish that he suffered substantial abuse as the victim of qualifying criminal activity. We dismissed the Petitioner’s appeal.

The matter is now before us on a motion to reopen. On motion, the Petitioner submits a personal statement, a mental health evaluation, and documentation about pharmaceuticals. The Petitioner claims that the additional documents were previously unavailable, and despite trusting his prior attorney, he was unaware that his earlier statements were not sufficient to establish the severity of the qualifying criminal activity on his emotional health.

Upon review, we will deny the motion to reopen.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

On motion, the Petitioner recounts the events for which he was a victim and reiterates that the worst part of being attacked was the emotional harm he has experienced because it intensified the feelings of anxiety and fear he felt upon witnessing the domestic violence his mother endured. He also reiterates that he has problems sleeping and feels “jumpy and on guard and look[s] over [his] shoulder whenever . . . [he] see[s] someone who resembles one of [his] assailants[.]” The Petitioner further reiterates that he suffers from depression and post-traumatic stress disorder (PTSD) as discussed by two licensed clinical social workers in a letter he submitted upon filing the Form I-918.

Also on motion, the Petitioner states that he overeats, does not feel joy in activities in which he used to participate, and stays home with his spouse and their daughter because it “is the only way to keep [them] all safe.” He further states that although he has felt “a little better” since meeting with a therapist, he has “a long way to go to recover and become close to ‘normal’ again[,]” and his physician has prescribed him medications for anxiety, depression, and his sleep issues.

In an additional mental health evaluation letter submitted with the Petitioner’s motion, a licensed clinical social worker reiterated the symptoms the Petitioner has reported experiencing and diagnosed the Petitioner with generalized anxiety disorder, major depressive disorder, and PTSD. The clinician recommended that the Petitioner undergo journaling and relaxation exercises.

The evidence submitted in support of the Petitioner’s motion to reopen does not overcome our previous conclusion that the record does not sufficiently demonstrate that the Petitioner has suffered substantial abuse as a victim of qualifying criminal activity. When making such an assessment, we look 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).

Although the evidence demonstrates that the Petitioner has been affected by the actions perpetrated against him, the record does not support a finding that the physical abuse he suffered was substantial. As a result of being punched and kicked, the Petitioner sustained temporary swelling and bruising. The Petitioner has explained why he did not seek medical attention after the attack and although medical attention is not a prerequisite for a finding of substantial abuse, the evidence in this case shows that the physical injuries suffered were minor. The police reports completed immediately after the incident do not demonstrate serious injury, nor has the Petitioner alleged or otherwise documented that his physical injuries were severe or lasting. The Form I-918 Supplement B, U Nonimmigrant Status Certification, also does not list any serious physical injury to the Petitioner. When viewed in light of the applicable regulatory factors, which require consideration of the nature, severity, and duration of the conduct and resulting injury, the harm against the Petitioner does not demonstrate substantial physical abuse.

Similarly, the record does not support a finding that his victimization caused the Petitioner substantial mental abuse. The Petitioner’s statements and the mental health evaluations indicate that he has experienced, among other things, anxiety, depression, and fear for his safety and that of his family since the incident. The evaluations also indicate that the Petitioner is suffering from PTSD. However, the regulatory factors, as applied to this case, do not demonstrate that the psychological harm was substantial. The mental harm to the Petitioner arose out of a single incident in which he received minor, physical injuries and threats. Although the event caused the Petitioner to fear for his safety and that of his family, he does not indicate that he has had any further contact with any of the perpetrators. Furthermore, the Petitioner has not indicated that his mental health problems have prevented him from working, caring for his family, or meeting his other responsibilities.

Although we do not minimize the impact of the crime on the Petitioner's life, the evidence does not demonstrate that the incident caused substantial physical or mental harm as contemplated by the regulation at 8 C.F.R. § 214.14(b)(1). When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner has suffered substantial abuse that resulted from qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.¹

III. CONCLUSION

Although the Petitioner has submitted new facts and evidence on motion, the evidence is cumulative to evidence already submitted and considered. The additional evidence reviewed on motion does not overcome the grounds for denial of the petition. The Petitioner bears the burden of proof to establish his eligibility. 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 to reopen will be denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-E-G-*, ID# 16328 (AAO Apr. 26, 2016)

¹ Although not discussed by the Director or in our prior decision, the record does not establish that sections 211 (Robbery) and 664 (Attempted Robbery) of the California Penal Code, the crimes certified on the Form I-918 Supplement B, are qualifying crimes or substantially similar to the qualifying crime of felonious assault. However, as the motion is denied on the grounds discussed above, we will not further address this additional deficiency.