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

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

MATTER OF I-S-H-

DATE: APR. 29, 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) §§ 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 petition and we dismissed a subsequent appeal. In our prior decision, we concluded that the Petitioner had not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and that he was inadmissible to the United States.

The matter is now before us on a motion to reopen. On motion, the Petitioner submits a letter from his counsel of record and an updated personal declaration. The Petitioner claims that his declaration on motion explains the existence of “perceived inconsistencies” identified in our prior decision and that the record demonstrates the requisite substantial physical or mental abuse.

Upon review, we will deny the motion to reopen.

#### I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). 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).

#### II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in October 2010, without admission, inspection, or parole. He was removed from the United States on [REDACTED] 2013, pursuant to a reinstated order of removal.<sup>1</sup>

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<sup>1</sup> We set forth here only the facts necessary, as our prior decision on appeal fully recited the relevant facts.

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The record indicates that on [REDACTED] 2000, the Petitioner was a victim of Robbery and Attempted Robbery while Armed with Deadly Weapon and of Carjacking under sections 16-11-330 and 16-03-1075 of the Code of Laws of South Carolina, respectively. Based on this criminal activity committed against him, the Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on September 9, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director issued a request for evidence (RFE), to which the Petitioner responded with evidence that the Director found insufficient to establish his eligibility. The Director denied the Form I-918, concluding that the Petitioner had not established that he had suffered substantial physical or mental abuse as a result of qualifying criminal activity and noting that the Petitioner appeared inadmissible under section 212(a)(1)(A)(iii) of the Act (physical or mental disorder). We dismissed the Petitioner's subsequent appeal. The Petitioner has now filed a timely motion to reopen.

### III. ANALYSIS

Upon a full review of the record, the Petitioner has not overcome the grounds for denial. The motion will be denied for the following reasons.

#### A. Substantial Physical or Mental Abuse

In our prior decision, incorporated by reference here, we addressed the individual evidentiary deficiencies in the record and ultimately found that the Petitioner had not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1). Specifically, we noted inconsistencies in the Petitioner's account of the armed robbery and carjacking, of which he was a victim in 2000, and of the injuries he suffered, as compared with his previous account set forth in the corresponding police report and in the Form I-918 Supplement B. We also determined that the evidence of record, including the statements of the Petitioner and his family members, had not established that the injuries he sustained as a result of the criminal activity rise to the level of substantial physical or mental abuse. We noted that on the Form I-918 Supplement B, at Part 3.6, the certifying official specifically indicated that there were no reported physical injuries to the Petitioner resulting from the criminal activity. There was also no evidence in the record that the Petitioner suffered ongoing or serious pain or injury as a result of being hit with a gun during the incident. Although the Petitioner reported an inability to sleep or eat, and feelings of loneliness, depression, and fear, the Petitioner's own evidence, including the statements of his relatives, indicated that his claimed depression resulted in large part from his physical separation from his family who were still in the United States. Accordingly, we concluded that the record did not establish that the 2000 criminal activity caused a decline in the Petitioner's mental health or that such decline was a serious or a lasting result of the commission of the offenses.

On motion, the Petitioner does not assert any legal or factual error in our decision, and instead, submits a brief, updated statement in which he explains that the inconsistencies we noted in our prior decision resulted because the criminal activity occurred over fifteen years ago and because he had tried to put the matter behind him. The Petitioner indicates that he does not recall whether two or three men attacked him, and that although he was not beaten with the gun during the criminal

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activity, he felt as though his assailants hit him with the gun as they placed the gun against his head forcefully. He asserts that his assailants did make him lie down on the ground and stole his wallet and shoes, and he hypothesizes that the police may not have noted the fact in the police report because he had not been “terribly physically injured.” He further maintains that he continues to suffer from insomnia, anxiety, depression, stress, nervousness, and fear because of what his attackers did to him, but does not have the financial resources to afford professional treatment.

Upon review, the Petitioner’s statement on motion does not overcome our prior findings. Even accepting the Petitioner’s explanation that any perceived inconsistencies were simply the result of the fact that the criminal activity occurred so many years ago, he has not shown that the injuries he claims to have sustained as a result of that criminal activity are substantial. Apart from generally and briefly asserting that he suffered from various mental health conditions stemming from the 2000 incident, his statement on motion does not specifically address our determination that the record lacked evidence demonstrating that he suffered ongoing or serious pain, injury, or mental health harm that rises to the level of substantial physical or mental harm. As he himself acknowledges, the reporting police officers believed that he did not suffer terrible physical injury, and the Form I-918 Supplement B specified that the Petitioner reportedly did not suffer any physical injuries. The Petitioner does not provide a probative description of his claimed mental health conditions and their impact on his daily life, and he does not address the evidence he submitted below indicating that his depression resulted from his forced separation from his family in the United States rather than from the events of the 2000 criminal activity against him as he maintains. In addition, we note that the psychological evaluation he submitted below from [REDACTED] addressing his alcohol abuse as it relates to his inadmissibility under section under section 212(a)(1)(A)(iii) of the Act (physical or mental disorder), indicated that the Petitioner had been diagnosed with Alcohol Use Disorder with Harmful Behavior Associated and with Antisocial Personality Disorder with Harmful Behavior Associated. The evaluation did not indicate that the Petitioner reported suffering, or was found to suffer, from depression or any of other ailments the Petitioner has asserted in these proceedings, and it specifically concluded that the Petitioner did not meet any clinical criteria for any other “conduct, mental and/or personality disorder,” apart from the stated diagnoses. Based on our review of the record, the Petitioner has not demonstrated any permanent or serious harm resulting from the qualifying criminal activity, and consequently, has not established that he suffered physical or mental abuse that was substantial under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1).

**B. Inadmissibility Under Section 212(a)(1)(A)(iii) of the Act**

On motion, the Petitioner does not challenge our determination that he is inadmissible to the United States under section 212(a)(1)(A)(iii) of the Act (physical or mental disorder) as well as under the other grounds identified by the Director in the RFE. As he is inadmissible and the grounds of inadmissibility against the Petitioner have not been waived, he is, consequently, also ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

#### IV. CONCLUSION

On motion, the Petitioner has not overcome the grounds for denial, as he has not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, nor that he is admissible to the United States. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

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.

**ORDER:** The motion to reopen is denied.

Cite as *Matter of I-S-H-*, ID# 16365 (AAO Apr. 29, 2016)