(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-E-

DATE: JAN. 27, 2016

MOTION ON 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. We dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. FACTS AND PROCEDURAL HISTORY

The Director denied the petition finding that the Petitioner did not demonstrate that she suffered substantial physical or mental abuse as the victim of qualifying criminal activity. In our decision on appeal, incorporated here by reference, although we determined that the Petitioner established that she was the victim of qualifying criminal activity, we affirmed the Director's determination that the record did not sufficiently demonstrate that the Petitioner suffered substantial mental abuse as a result of such activity as required by section 101(a)(15)(U)(i)(I) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I).

III. ANALYSIS

On motion, the Petitioner submits a brief and personal statement, copies of court and police documents, a handwritten letter from her daughter, tax documents, rental receipts, a utility billing statement, and a copy of the federal poverty guidelines. The Petitioner asserts her "life has dramatically changed" since [redacted] 2012, when she witnessed a murder and subsequently testified in the criminal trial that led to an individual's conviction for the murder. The Petitioner indicates that she did not suffer from mental illness prior to witnessing the murder, but was diagnosed subsequently with Post-Traumatic Stress Disorder (PTSD), and argues that according to the American Psychiatric Association, PTSD occurs upon an individual being exposed to "actual or

threatened death, serious injury or sexual violation." The Petitioner also asserts, in our previous decision, we "questioned" her psychotherapist's diagnosis of PTSD by concluding that two hundred minutes of therapy and two sessions of "fact gathering and doing history of the case" were insufficient for making such a diagnosis and for establishing substantial mental abuse. The Petitioner further asserts, "As a license[d] therapist, it is presumed that [he] met with [her] sufficiently to make a professional determination of her mental health."

A review of the record indicates, in our prior decision, we acknowledged that the Petitioner attended four, 50-minute sessions with a psychotherapist, who diagnosed the Petitioner with PTSD based on her symptoms of anxiety and sleep deprivation. We did not make any adverse conclusions regarding the diagnosis and the therapist's credentials, or his ability to make such a diagnosis based on the amount of time spent with the Petitioner. Despite the diagnosis, however, we concluded that the record lacked sufficient and probative details of the Petitioner's overall mental health to properly evaluate the effect that the qualifying crime had on her wellbeing to establish that she suffered substantial mental abuse under the factors described in the regulations at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act.

In addition, the Petitioner argues there is "no single factor" for determining whether she has suffered substantial mental abuse and that her diagnosis of PTSD, based on the degree and length of her symptoms, supports a finding of substantial mental abuse. She further asserts that since her testimony that assisted in a murder conviction, her symptoms of PTSD have been "heightened" as she has been the victim of additional circumstances; a burglary of her home on , 2015, and in 2015, the receipt of a threatening message, stating "she would pay for what she had done." The Petitioner indicates that her daughter was a witness to the threatening message, and the Petitioner therefore now worries for her daughter's safety and mental state.

On motion, the Petitioner does not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, nor does she show that our prior decision was erroneous based on the evidence of record at the time. We recognize that a witness to a violent crime may suffer emotional trauma in the absence of physical harm and the Petitioner has established that she continues to exhibit symptoms consistent with her PTSD since witnessing a qualifying crime in 2012. However, the Petitioner's submission on motion does not overcome our previous conclusion that the record does not sufficiently demonstrate that she has suffered substantial mental abuse. Although we do not minimize the impact of the original crime on the Petitioner and her family, as well as her new claim of being victims of burglary and a threat, the evidence in the record discusses in only general terms the Petitioner's PTSD and related symptoms as well as the concerns she has for her family's safety.

A review of the record indicates that our prior decision was supported by the evidence in the record at the time, and we did not ignore or mischaracterize the Petitioner's evidence, or apply an erroneous standard of review in determining that the Petitioner has not established that she suffered substantial mental abuse because of qualifying criminal activity. The Petitioner has not submitted sufficient, probative evidence demonstrating that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse under the standard and factors prescribed by the

regulation at 8 C.F.R.§ 214.14(b)(1). Accordingly, we must deny the motion to reconsider for not meeting the applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127-28 (BIA 2013). Here, that burden has not been met. Accordingly, the motion to reconsider will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-M-E-*, ID# 15693 (AAO Jan. 27, 2016)