



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

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

MATTER OF A-G-L-

DATE: JUNE 2, 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 petition. The Director concluded that the Petitioner did not establish that she was the victim of qualifying criminal activity or that she suffered substantial physical or mental abuse as a result of such activity, and that she did not meet the remaining criteria for eligibility. The Petitioner filed a subsequent appeal and contested the Director's conclusions. We dismissed the appeal, as the certified criminal activity did not result in substantial mental abuse. We further determined that the felonious assault certified in the case was qualifying criminal activity, that the Petitioner met the remaining eligibility criteria, and withdrew the Director's findings to the contrary. The Petitioner filed a motion to reopen and reconsider. She claimed that her mental suffering from the qualifying criminal activity was exacerbated by pre-existing trauma from the childhood abuse she experienced in Mexico, and was substantial. We concluded that the evidence did not sufficiently establish that the Petitioner's current anxiety and depression resulted from the qualifying criminal activity.

The matter is now before us on a second motion to reopen and reconsider.¹ On motion, the Petitioner submits a brief and previously submitted evidence. The Petitioner claims that we erred in not considering both the severity of the harm from the qualifying criminal activity and the latent trauma disorder from her abusive childhood.

Upon review, we will deny the motion.

¹ Although the Petitioner checked the box on the Form I-290B, Notice of Appeal or Motion, indicating that she is filing a motion to reconsider, in her brief and accompanying letter she refers to the instant filing as a motion to reopen and reconsider. Accordingly, we will adjudicate the motion as a motion to reopen and reconsider.

I. APPLICABLE LAW

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). 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 United States Citizenship and Immigration Services (USCIS) 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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico. She filed the instant Form I-918, Petition for U Nonimmigrant Status, after being assaulted by five young girls, who pulled three necklaces off of her neck and took her cellular phone.² The Petitioner did not report having suffered any physical injury as a result of the assault, and on the Form I-918 Supplement B, U Nonimmigrant Status Certification, the certifying official confirmed that although the Petitioner “was shaken after the event,” she did not report any physical injury.

The record establishes that the Petitioner’s aunt verbally and physically abused her when she was a child in Mexico. As we summarized the relevant facts in our previous decisions, incorporated here by reference, we will not repeat the specific instances of verbal and physical abuse recounted by the Petitioner, her sister, and others concerning that abuse.³

On appeal and in her first motion, the Petitioner claimed that the criminal incident awakened the latent suffering from the abuse she suffered as a child, and asserted that the abuse she suffered from the criminal incident thus constituted substantial abuse under the definition and relevant factors at 8 C.F.R. §§ 214.14(b)(1) and (c)(8). In our previous decisions, we concluded that the Petitioner did not establish by a preponderance of the evidence that she suffered substantial mental abuse as a victim of qualifying criminal activity. We determined that the Petitioner did not suffer physical injury as a result of the criminal incident, the perpetrators’ conduct was not severe, the immediate harm was not of extended duration, and aggravation of a pre-existing condition was only one of the factors described in 8 C.F.R. § 214.14(b)(1). The Petitioner claims in the instant motion to reopen

² This criminal incident was certified as the qualifying criminal activity on the Form I-918 Supplement B, U Nonimmigrant Status Certification.

³ In the last paragraph of the analysis section in our decision on motion, we stated that even if there were a link between the criminal incident and the Petitioner’s latent suffering, that the Petitioner had not established that her suffering in Mexico rose to the level of substantial abuse under the relevant factors enumerated at 8 C.F.R. § 214.14(b)(1). The noted paragraph is unclear and is withdrawn in its entirety.

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and reconsider that we ignored and mischaracterized the facts and misconstrued applicable law and policy.

III. ANALYSIS

The Petitioner has not asserted new facts to be proved in the reopened proceeding, as required by the regulation at 8 C.F.R. § 103.5(a)(2). The Petitioner does not cite binding precedent decisions or other legal authority establishing that we 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, as required by the regulation at 8 C.F.R. § 103.5(a)(3). Consequently, the motion to reopen and reconsider will be denied for the reasons discussed below. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

When assessing whether a petitioner suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at factors such as 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 issue on motion is whether or not the Petitioner has established that the harm from the criminal incident constitutes substantial abuse under these factors, as defined at 8 C.F.R. § 214.14(c)(8).

In the Petitioner's declaration before the Director, she stated that following the criminal incident, for seven to eight months she was very anxious and afraid when she went out, did not want to walk alone, and kept looking over her shoulder. She indicated that she constantly replayed the robbery in her head, wishing she had fought back, and that her helplessness during the attack reminded her of the helplessness she felt as a child when living with her aunt's abuse. The Petitioner recounted being social with others during high school, and stated that since she graduated from high school, she has few friends and spends most of her time with her family or at work. She indicated that she was three months pregnant and hoped to stay in the United States with her family.

The Petitioner's sister also described in her statement that the Petitioner was social in high school soon after their arrival in the United States, and became subdued after the incident. However, both the Petitioner's mother and father expressed concern about the Petitioner's mental health as soon as she arrived in the United States. The Petitioner's mother stated that her daughter "is very sensitive and fragile as a result of what my sister [redacted] made them suffer." Her father stated that "little by little [the Petitioner] was trying to overcome everything that she had suffered – with my love and patience I helped her." While we are sympathetic to the Petitioner's suffering, the causal link between the harm from the qualifying criminal activity and any suffering as a result of her childhood abuse is not supported by a preponderance of the evidence.

In the instant motion, counsel refers to evidence previously submitted into the record. Counsel states that we ignored the findings of [redacted] M.A., who examined the Petitioner for two hours and concluded that the Petitioner was severely traumatized as a result of the criminal incident.

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because the incident aggravated her latent depression and the childhood abuse suffered from her aunt in Mexico, which directly increased the severity of the Petitioner's psychological response to the criminal assault. While we do not question [REDACTED] credentials, her report conflicts with the Petitioner's statement that she suffered fear and anxiety from the criminal incident for eight months. Counsel further refers to [REDACTED] statement that as a result of the attack, the Petitioner "cannot hear people yelling near her, because she becomes very nervous. She feels her heart racing, she hyperventilates This has affected her capacity to socialize." [REDACTED] evaluation is not supported by the Petitioner's declaration; the Petitioner did not describe symptoms of hyperventilation or an inability to hear others. [REDACTED] also mentions that the Petitioner was social in high school, and that following the robbery, she has stayed at home. The Petitioner's statement, on the other hand, does not list this lack of social life as a result of any emotional trauma following the criminal incident, but rather suggests that it results from the fact that she is no longer in high school, and is focused on work and family obligations. The Petitioner also noted that it is immigration proceedings and her unexpected pregnancy that have made her and her family nervous and anxious, and that are causing her and her family stress.

The Petitioner did not suffer any physical injury during the criminal incident. The perpetrators' conduct and the actual harm inflicted were not severe. The Petitioner reported that she is working, which suggests that she has neither permanent nor serious harm resulting from the qualifying criminal activity. To the extent that the Petitioner indicated that her fear and anxiety lasted for about seven to eight months following the incident, the duration of the harm was not severe. The Petitioner further points to immigration proceedings and her unexpected pregnancy as the cause of any ongoing stress and anxiousness.

In her brief, the Petitioner asserts that we grossly mischaracterized the evidence, and in so doing, violated her due process rights. The Petitioner cites to *Larita-Martinez v. I.N.S.*, 220 F.3d 1092, 1095 (9th Cir. 2000), to show that an alien's due process rights may be violated if the Board of Immigration Appeals fails to consider relevant evidence. However, the court in *Larita-Martinez* noted that "aliens *in deportation proceedings* are 'entitled to the fifth amendment guaranty of due process.'" *Id.* (emphasis added). The holding does not apply to benefit applications, as there are no due process rights implicated in the adjudication of a benefits application.⁴ See *id.*; *Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008).

⁴ Furthermore, the Petitioner has not shown that USCIS failed to consider relevant evidence, but rather takes issue with the evaluation of said evidence.

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The Petitioner further claims that when Congress enacted the Violence Against Women Act (VAWA), it mandated that evidence be liberally accepted under the “any credible evidence” standard to make it easier for battered women and children to establish eligibility for the benefit, and that our analysis of the evidence does not comport with the expansive interpretation required under the Act. She cites *Oropeza-Wong v. Gonzales*, 406 F.3d 1135, 1144-45 (9th Cir. 2005), in support of her assertion that we interpreted the facts too narrowly. While we agree that any credible evidence may be considered, *Oropeza-Wong* does not change the requirement that the Petitioner has the burden of proving her eligibility, and that we must determine the weight to be given to the evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

We have considered all of the evidence. The evidence here does not establish by a preponderance of the evidence that the Petitioner suffered substantial physical or mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act.

IV. CONCLUSION

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.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-G-L-*, ID# 16639 (AAO June 2, 2016)