



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

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

MATTER OF D-C-E-

DATE: JUNE 9, 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 had not established that he was a victim of qualifying criminal activity, or that he had suffered substantial physical or mental abuse as the result of having been the victim of qualifying criminal activity. The Petitioner filed an appeal, and we affirmed the Director’s denial in a decision dated October 6, 2015, which is incorporated here by reference. We determined that the Petitioner had not shown that he suffered substantial physical or emotional abuse, and that he was neither a victim of qualifying criminal activity nor a bystander victim.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has suffered substantial mental abuse as a result of the qualifying criminal activity.

Upon review, we will deny the motion.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

....

- (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

- (a) *Definitions.* As used in this section, the term:

. . . .

(8) *Physical or mental abuse* means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

. . . .

- (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; 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. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level

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 in our review; 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, a native and citizen of Mexico, claims to have entered the United States in June 1998 without inspection, admission, or parole. The Petitioner subsequently filed the instant Form I-918, Petition for U Nonimmigrant Status, and Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the Petitioner’s Form I-918 and we affirmed the Director’s

decision on appeal. On motion to reconsider, the Petitioner asserts that he suffered substantial mental and psychological abuse as a result of being a victim of a qualifying crime.

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 Petitioner does not cite precedent decisions to establish that our prior decision was based on an incorrect application of law or USCIS policy and does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion reconsider will be denied. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

Based on the evidence in the record, as supplemented on motion, the Petitioner has not overcome our previous decision.

A. The Petitioner has not Suffered Substantial Abuse as a Result of Qualifying Criminal Activity

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks 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). We consider "any credible evidence" relevant to the petition. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). On the Form I-918 Supplement B, the certifying official lists Minnesota statute section 609.222, assault with a dangerous weapon, as the criminal activity that was investigated or prosecuted.¹ Although the certifying official states that the Petitioner suffered substantial emotional harm, she does not describe any particular emotional harm suffered by the Petitioner.

In our previous decision we indicated that the Petitioner's assertions that he had nightmares and could no longer trust people did not establish that the incident resulted in permanent or serious harm to his physical or mental soundness under the definition of "substantial abuse" and relevant factors at 8 C.F.R. §§ 214.14(a)(8) and (b)(1). On motion, the Petitioner relies on his statements previously submitted into the record. He reasserts that he has constant anxiety, nightmares, and a persistent fear of retribution for the assistance he provided to the police following the incident. In his brief he describes avoidant behavior developed in response to the incident, and that he does not leave his home at night "except for the absolute necessities." He asserts that he suffers symptoms similar to those who suffer with post-traumatic stress disorder (PTSD), in that he is triggered by certain events

¹ We previously determined that in the context of this case, assault with a dangerous weapon is a qualifying criminal activity.

(b)(6)

Matter of D-C-E-

to re-live the fear, which leads him to anticipate the worst is about to happen. He submits a copy of a blog by [REDACTED] Ph.D. entitled [REDACTED] (2011), in which [REDACTED] states that “[REDACTED]”

In his statements in support of the petition, the Petitioner does not describe with any particularity the long-lasting effects of the incident on his work, family life or other relationships, and does not establish that the emotional harm is substantial, permanent, or serious. Further, the record does not contain medical documentation in support of the Petitioner’s claim that he has suffered substantial mental abuse. Consequently, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial physical or mental abuse resulting from qualifying criminal activity.

B. The Petitioner is not an Indirect or Direct Victim of Qualifying Criminal Activity

On motion, the Petitioner does not address our conclusion that, as he is not a direct or indirect victim of qualifying criminal activity, he is not eligible for the U nonimmigrant visa. Although the certifying official indicated at Part 4.5 of Form I-918 Supplement B that the Petitioner “may qualify as an indirect victim,” the Petitioner does not fall within the class of persons who may be indirect victims under the regulation at 8 C.F.R. § 214.14(a). The regulation provides that the spouse and children of the direct victim, or the parents and unmarried siblings under 18 years of age of a direct victim who is under 21 years of age, will also be considered victims of qualifying criminal activity if the direct victim is deceased due to murder or manslaughter. 8 C.F.R. § 214.14(a)(14)(i). In the instant matter, the record does not establish that the direct victim of the criminal activity was related to the Petitioner, or died as a result of the attack.

Nor can the Petitioner be considered a “bystander victim” of a qualifying criminal activity. The evidence shows that the Petitioner was in his apartment when he heard shots fired on the street outside of his apartment building, looked through a peephole in his apartment door and witnessed several people enter a neighboring apartment, and subsequently gave a full statement to the police. There is no support for the Petitioner’s claim that he was directly or proximately harmed by the criminal activity.

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 reconsider is denied.

Cite as *Matter of D-C-E-*, ID# 16567 (AAO June 9, 2016)