



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

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

MATTER OF D-M-S-R-

DATE: JUNE 21, 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 been helpful in the investigation or prosecution of qualifying criminal activity. We dismissed the Petitioner's subsequent appeal. We concluded that the Petitioner was not helpful in the investigation or prosecution of qualifying criminal activity and additionally determined that she did not suffer substantial abuse as a result of qualifying criminal activity.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that she was helpful in the investigation of the criminal activity, and that she suffered substantial mental abuse resulting from such activity.

Upon review, we will deny the motion.

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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who entered the United States on February 2, 1992, as a nonimmigrant visitor. She filed the Form I-918, Petition for U Nonimmigrant Status (U petition) and Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) on July 17,

2013. The Supplement B indicated that the Petitioner was the subject of a criminal sexual assault by her cousin, C-M-¹ in 2005. The Director denied the U petition, determining that because the Petitioner declined to press charges against C-M-, she did not provide continuing assistance in the investigation or prosecution of the sexual assault. On appeal, the Petitioner claimed that she was helpful to the investigation, as she reported the criminal activity to two police departments, participated in initial questioning, and did not refuse to continue providing assistance to the police department in the investigation of the crime. In our decision dismissing the appeal, which is incorporated here by reference, we stated that the evidence showed that on the date of the arrest, the Petitioner indicated to the police that she would not sign a complaint against C-M- and additionally requested that the police not issue any complaint. She further indicated in the written statement that she wanted to “just have the incident documented.” We concluded that the Petitioner was not helpful in either the investigation or the prosecution of the qualifying criminal activity.

III. ANALYSIS

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

A. Helpfulness

To be eligible for U nonimmigrant classification, the Petitioner must demonstrate, in part, that she has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). The term “investigation or prosecution” is defined to include the detection of the qualifying criminal activity. 8 C.F.R. § 214.14(a)(5).

On appeal, the Petitioner stated that she satisfied the statutory requirement of helpfulness in the investigation of qualifying criminal activity in that she reported the sexual assault, would have answered any further questions from law enforcement, and that it was the prosecutor’s choice to determine whether the charges would be prosecuted. The evidence, however, showed that at her first meeting with the police, although the police department was willing to issue a complaint against her cousin, the Petitioner would not sign a complaint, and requested that the police not issue a complaint. We thus determined that the Petitioner was not helpful to the certifying agency either at the time she reported the crime or thereafter.

On motion, the Petitioner asserts that the Supplement B establishes the requisite helpfulness, because it states that she has been, is being, or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity, has not been requested to provide further assistance, and has not unreasonably refused to provide assistance. She asserts that we have inappropriately and

¹ We provide the initials of individual names throughout this decision to protect identities.

inconsistently applied the law, and attaches a copy of a non-precedent AAO decision in which we determined that a victim who was reluctant to assist in the prosecution of qualifying criminal activity nonetheless qualified for the U visa because the victim assisted in the investigation of the crime. As we do not have access to the record of proceedings in that case, which was based on evidence unique to those proceedings, the Petitioner's contention that we are inconsistent in the application of the law is without merit. Further, while the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

In order to meet the criteria for helpfulness under the regulation at 8 C.F.R. § 214.14(b)(3), the Petitioner must show that since the initiation of cooperation, she has not refused or failed to provide information and assistance reasonably requested. The Petitioner states that the certification process does not require a victim's testimony or completion of prosecution. We acknowledge that the Petitioner reported the crime to the police, and did not want to press charges because she did not want to harm her cousin's wife and children. She also states that she was afraid of the potential immigration consequences of prosecuting the crime. Nevertheless, she does not meet the requirements of the regulation, as she was unwilling to comply with the police department's reasonable request that she sign a complaint against the perpetrator of the crime. *See* 8 C.F.R. § 214.14(b)(3).

The Petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

B. Substantial Physical or Mental Abuse

When assessing whether substantial physical or mental abuse was suffered 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).

On appeal, we determined that the Petitioner's statement contained insufficient details describing the connection between her claimed mental health issues and the sexual assault, and she did not submit other evidence to establish that the sexual assault resulted in substantial abuse under the definition and relevant factors at 8 C.F.R. §§ 214.14(a)(8) and (b)(1). On motion, she submits a statement from her brother, J-S-R-, who accompanied the Petitioner to the police station to report the crime. J-S-R- states that prior to the assault, the Petitioner was "a very independent, confident woman, very active, working, studying, paying taxes, going to the gym and going out with friends." Since the incident, he states that she never goes out alone, keeps her home locked and alarmed, hates her cousin, and has no confidence in men. She also submits a letter from S-S-, an ex-boyfriend, who states that the Petitioner confided in him that she could not become romantically involved because of the sexual assault by her cousin. S-S- indicates that he has been friends with the Petitioner for eight

years, and has observed a similar pattern between the Petitioner and others who have dated during that time. The statements of J-S-R- and S-S- do not establish that the certified crime resulted in serious or permanent impairment to the Petitioner's emotional or psychological soundness.

While we do not minimize the Petitioner's emotional pain from the sexual assault by her cousin, the Petitioner has not sufficiently described the abuse she suffered as a result of the attack to establish substantial physical or mental abuse under the regulation. As we discussed on appeal, the Petitioner generally described her depression and feelings of low self-esteem following the attack, but her statement did not specify substantial harm resulting from the crime. She stated that she has been tormented by memories, and has distanced herself from her family to protect herself from retribution if she discloses her cousin's involvement. She has not described permanent or serious harm to her physical health or mental soundness resulting from the assault, and does not supplement her statement on motion. The Petitioner has not demonstrated that she suffered substantial abuse resulting from qualifying criminal activity as defined in the regulations and as required by subsection 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 D-M-S-R-*, ID# 16777 (AAO June 21, 2016)