



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

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

MATTER OF M-B-A-

DATE: MAY 12, 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 Form I-918, Petition for U Nonimmigrant Status. The Director concluded that the Petitioner did not establish that she was a victim of qualifying criminal activity, and thereby, did not establish that she meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. Upon motion to reopen, the Director determined that the Petitioner did not overcome the grounds for denial. We dismissed the Petitioner’s subsequent appeal.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner generally claims that we erred in our previous finding that she was not a victim of qualifying criminal activity, and we “completely dismissed the new Form I-918” submitted in support of her appeal, which clearly demonstrates that she was helpful in the prosecution of her partner’s, Y-G-’s,¹ perpetrators.

Upon review, we will deny the motion to reconsider.

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).

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

¹ Name withheld to protect individual’s identity.

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. ANALYSIS

As indicated in our previous decision which is incorporated here by reference, the Petitioner has not established that she is the direct or indirect victim of qualifying criminal activity. On motion, the Petitioner acknowledges that she is not an indirect victim but argues that she qualifies as a “bystander victim” as she has suffered “an usually direct injury” as a result of Y-G-’s murder. Citing to the U.S. Dep’t of Justice, Office for Victims of Crime, Attorney General Guidelines for Victim and Witness Assistance (2011 ed., rev. May 2012)(AG Guidelines) and its example of a bystander witness as a pregnant woman who suffers a miscarriage as a result of witnessing a violent crime, the Petitioner states she has lost her “soul mate and lifetime companion,” suffers emotionally and psychologically “on a daily basis,” struggles to financially support herself and her two children, and was forced to move from where she lived with Y-G-.

By the Petitioner’s own admission, she was not present at the time of Y-G-’s murder or any aspect of the commission of the qualifying criminal activity. She states that although she did not witness the actual crime, she learned of the event shortly thereafter and likely “would have also been shot” if she were with Y-G-. Even though she further provides a general description of the financial, psychological, and emotional harm that she has suffered based upon Y-G-’s murder, the Petitioner’s claims do not demonstrate an “unusually direct injury,” such as the example provided in the AG Guidelines.

In our prior decision we also determined the Petitioner did not establish that she possessed information and was helpful to authorities because her initial Form I-918 Supplement B, U Nonimmigrant Status Certification, expressly indicated that she did not possess information concerning the qualifying criminal activity and she was not helpful in the investigation or prosecution.² Although we recognized the submission of a new Form I-918 Supplement B on appeal, we did not consider it because it did not comply with the regulation at 8 C.F.R. § 214.14(c)(2)(i) which requires as initial evidence, a Form I-918 Supplement B, signed by the certifying official within the six month period immediately prior to filing the Form I-918.

On motion, the Petitioner states that the regulations “do not prohibit the submission of supplement U visa certifications in support of a U visa petition[,]” but does not otherwise address our finding that the Form I-918 Supplement B, did not conform to the requirements of the regulation as it was not submitted as required initial evidence and was certified nearly two years after the filing of the Form I-918.

² This requirement comes from section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) which requires certification from an authority that, among other things, a petitioner “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity.

Matter of M-B-A-

The Petitioner's submission on motion does not overcome our previous conclusion that the record does not sufficiently demonstrate that she is a victim of qualifying criminal activity as well as possesses information and was helpful to authorities concerning the qualifying criminal activity. In addition, 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.

III. CONCLUSION

The Petitioner has not established that she meets any of the eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. The Petitioner bears the burden of proof to establish her eligibility. 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. Accordingly, the motion to reconsider will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of M-B-A-*, ID# 16459 (AAO May 12, 2016)