



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

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

MATTER OF R-N-R-M-

DATE: MAY 13, 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 the Petitioner did not establish that she has been a victim of qualifying criminal activity or criminal activity substantially similar to crimes enumerated in the Act. Accordingly, the Director determined the Petitioner did not establish that she meets the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(III) of the Act. We dismissed the Petitioner’s appeal.¹

The matter is now before us on motions to reopen and to reconsider. On motion, the Petitioner submits a brief and a personal statement. The Petitioner claims that we made adverse inferences, questioning her credibility and that of the investigating law enforcement agency without citing a standard of evidence. She also claims that we ignored a medical report, and thereby, did not properly consider “any credible evidence” submitted into the record of proceedings.

Upon review, we will deny the motions to reopen and to reconsider.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved 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 U.S. 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).

¹ Although not specifically addressed by the Director, in our prior decision, we further concluded that since the Petitioner did not establish that she has been a victim of qualifying criminal activity or criminal activity substantially similar to crimes enumerated in the Act, she also did not meet the eligibility criteria at section 101(a)(15)(U)(i)(IV) of the Act.

As indicated by the Petitioner, she bears the burden of proof 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. ANALYSIS

A. Motion to Reopen

In our prior decision, incorporated here by reference, we determined that the record did not support a finding that the certifying official detected, investigated, or prosecuted qualifying criminal activity, and therefore, the Petitioner did not establish that she was a victim. Specifically, we found that on the Form I-918 Supplement B, when asked to list the crimes certified as being investigated or prosecuted, the certifying official stated the “victim complains of false imprisonment . . . and assault [and] battery.” There was no indication that the certifying agency took any action other than documenting the Petitioner’s claims. Although the initial police reports and supplements similarly documented the Petitioner’s claims, the record did not establish that the certifying agency actually detected or investigated qualifying criminal activity.

On motion, the Petitioner again discusses the events for which she was a victim and reiterates that her initial contact with the police occurred after she was trapped in a fenced area and beaten until she was unconscious by unknown assailants. She repeats that she was distraught and intoxicated, and then placed under a 72-hour psychiatric hold because the police officer mistakenly believed that she was suicidal. She also recounts that a nurse, who assisted in the examination of her injuries, encouraged her to return to the authorities to report that she was in fact a victim of a crime. The Petitioner further explains that with the encouragement of her mother and the assistance of her brother, she then went to the police station where she was told that she would have to follow-up with the officer with whom she initially reported the incident. She indicates that because of the officer’s work schedule, she was unable to meet with him at that time, but was later able to tell “him [she] knew where the crime happened and [she] could show him. However, [she] had the feeling that [he] was not going to investigate further because [she] couldn’t tell [him] who assaulted [her].” She also states “the police never called [her] or followed up[.]” and the case was filed as “inactive” because she could not provide the identity of a suspect. The Petitioner explains that she subsequently spoke with an immigration lawyer and was able to obtain a police report, but it did not contain “all of the important details” that she had previously reported. Accordingly, she states that she then submitted a written statement to the authorities, providing further details, and she additionally obtained the medical report which showed that she sustained bruises and reported the crime while she was at the hospital.

The new statement submitted on motion is cumulative to evidence already submitted and considered regarding the Petitioner’s contact with the police. It does not offer additional facts or information which demonstrate that the certifying agency detected, investigated, or prosecuted felonious assault

(b)(6)

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or false imprisonment. Accordingly, as the new facts offered on motion do not overcome our previous conclusion, we must deny the motion to reopen.

B. Motion to Reconsider

On motion, the Petitioner asserts that pursuant to the revised Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines),² the [REDACTED] Police Department “detected” qualifying criminal activity because it had to open an investigation before closing it or filing it as “inactive.”

As discussed in our prior decision, the initial police report stated that after encountering the Petitioner, an officer with the [REDACTED] Police Department referred the Petitioner to an institution for 72-hours when the Petitioner threatened to commit suicide, and upon doing so, closed the case. As also discussed, the initial police report was supplemented after the Petitioner returned to the police station to document her claim that she “had . . . been beaten up by an unknown Polynesian female.” The supplemental report indicated the case was filed as “inactive, due to lack of suspect information.” As further discussed, upon receiving the Petitioner’s written affidavit, the police report was supplemented a second time to reflect the Petitioner’s claim she had been “physically assaulted, falsely imprisoned, and suffered her injury.” This second supplemental report also stated “[s]ince the victim is unable to identify the suspect, the case remain closed [*sic*].”

Although the Petitioner claims that we made “adverse inferences” regarding the timing of her statements to the police, our prior decision does not indicate that we questioned the credibility of the Petitioner, the certifying agency or official, or otherwise made any negative finding based upon her multiple statements. Even though we have not made an adverse determination regarding credibility, the record does not support a finding that a qualifying crime was detected, investigated, or prosecuted. The Petitioner has not submitted evidence to establish that even when it was “unclear whether a crime was committed” against her, any investigation was actually initiated based upon her claims. As discussed in our prior decision and reiterated above, it is within our sole discretion to determine the proper weight to accord the Form I-918 Supplement B, and the original and supplemental police reports, when deciding whether the Petitioner has established that she was a victim of qualifying criminal activity by the certifying agency.

The record does not establish that the [REDACTED] Police Department actually detected or investigated whether the Petitioner was the victim of a false imprisonment or felonious assault. Rather, the Form I-918 Supplement B and the police reports document only the information that was provided by the Petitioner; they do not indicate any separate determination regarding her claim or that any further investigative action was taken. In addition, while the Petitioner’s medical reports

² U.S. Dep’t of Justice, Office for Victims of Crime, Attorney General Guidelines for Victim and Witness Assistance (2011 ed., rev. May 2012) (stating “[i]n some situations, an investigation may be initiated at a point in time when it is still unclear whether a crime was committed.”).

are consistent with her claims regarding the type of crime reported to the police, they are not sufficient evidence for establishing the detection or investigation of qualifying criminal activity.³

Upon review, the Petitioner has not overcome our prior determination. The Petitioner, on motion, has not established that we incorrectly applied pertinent law or agency policy, that we ignored or mischaracterized the evidence, or that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be denied.

III. CONCLUSION

The Petitioner has not established that she is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and she thereby cannot demonstrate that she meets any of the remaining 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 motions to reopen and to reconsider will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-N-R-M-*, ID# 16571 (AAO May 13, 2016)

³ As we have found the Petitioner ineligible for the reasons discussed above, we will not further discuss the information contained in the medical report as it relates to whether she was a victim of substantial physical or mental abuse under section 101(a)(15)(U)(i)(I) of the Act.