



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

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

MATTER OF O-M-I-N-

DATE: MAY 25, 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 and we dismissed a subsequent appeal.¹ In our prior decision, we concluded that although the Petitioner was the victim of qualifying criminal activity, she had not demonstrated that she suffered substantial physical or mental abuse as a result of having been a victim of such activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record below and on appeal demonstrates the requisite substantial physical or mental abuse.

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

I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). 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 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).

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 We issued our prior decision on appeal under the Petitioner's second alien registration number, which has been consolidated into the Petitioner's primary alien registration number under which this decision is issued.

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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 is a native and citizen of Mexico who claims to have last entered the United States in December 1997, without admission, inspection, or parole. The record indicates that the Petitioner had been in the United States prior to her December 1997 entry. She had been placed into removal proceedings pursuant to a Notice to Appear issued on April 21, 1997. An Immigration Judge granted the Petitioner voluntary departure on August 26, 1997, and the Petitioner thereafter departed the United States pursuant to the voluntary departure order on November 18, 1997.

Between May 2010 and September 2010, the Petitioner and her spouse were victimized by an individual who held himself out to be an immigration attorney, extorted approximately \$8,000 from the Petitioner, and threatened to have her deported if she contacted law enforcement to report him. Based on the criminal activity committed against her, the Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on July 30, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the Form I-918 because the Petitioner had not established that she was a victim of qualifying criminal activity and therefore did not establish the remaining statutory criteria for U nonimmigrant classification. On appeal, we withdrew in part the Director's decision, but ultimately dismissed the appeal because the Petitioner had not shown the requisite substantial physical or mental abuse. The Petitioner has now filed a timely motion to reopen and reconsider.

III. ANALYSIS

Upon a full review of the record, the Petitioner has not overcome the grounds for denial.

In our prior decision on appeal, incorporated by reference here, we dismissed the Petitioner's appeal, finding that the Petitioner had not established that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, under the factors and standard set forth in 8 C.F.R. § 214.14(b)(1). Specifically, we noted that the Petitioner, in her written statements, described the facts of the criminal activity and noted multiple stressors in her life but did not include a detailed description of the impact of the criminal activity on her daily life and overall health and wellbeing. We further noted that the psychological evaluation that the Petitioner proffered noted the existence of preexisting stressors relating to the Petitioner's immigration and financial status but attributed the Petitioner's psychological symptoms entirely to the qualifying criminal activity without any consideration of whether the other stressors in her life may have resulted in or contributed to those symptoms.

On motion, the Petitioner asserts that we incorrectly applied the law and misinterpreted the evidence below, and she contends that the record sufficiently demonstrated the requisite substantial physical and mental abuse. For instance, the Petitioner asserts that the November 18, 2013, psychological evaluation by [REDACTED] submitted below, sufficiently described the Petitioner's

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numerous symptoms and related them back to the Petitioner's involvement with the perpetrators of the qualifying criminal activity. As discussed in our initial decision, [REDACTED] psychological evaluation identified various psychological symptoms and generally asserted that they were directly related to the criminal activity and that they impacted the Petitioner's daily life without further discussion. The evaluation did not provide any substantive information or specific examples about how her day to day life was affected and did not consider the impact of the multiple other stressors that the Petitioner identified had on her emotional and physical wellbeing, including her lack of immigration status and financial stress. Accordingly, we correctly concluded that the evaluation was insufficient in establishing that the Petitioner suffered substantial mental or physical abuse, particularly where the Petitioner herself did not describe in any probative detail the psychological and emotional impact in her written statements. In addition, upon further review, while [REDACTED] evaluation described the Petitioner as suffering from a "barely manageable" level of anxiety and various symptoms (including chest pains due to stress), a November 22, 2013, letter in the record from the Petitioner's pastor and counselor, [REDACTED] indicated that the Petitioner was "more positive and strong," has not felt chest pains, and has felt better mentally as a result of counseling sessions with the Pastor.

On motion, the Petitioner submits an updated personal statement and a psychological evaluation from [REDACTED] Licensed Professional Counselor, dated February 3, 2016. In the Petitioner's statement on motion, she expresses frustration that the perpetrators have "gotten away" with their criminal activity, despite the Petitioner's assistance to law enforcement authorities. She states that because she sees one of the perpetrators regularly at church, she feels fear and anxiety, resulting in neck pain and body tension. The Petitioner indicates that she still has nightmares, although not as often as before, including nightmares about immigration officials arriving at her home. The Petitioner also notes that although she used to have stress and headaches previously, they have become more severe, sometimes lasting hours or even days. She states that her daily life has changed because she is less patient, has no desire to meet people or socialize, and has lost the ability to concentrate and remember routine deadlines and tasks. However, while the Petitioner reports various general psychological and physical symptoms, she does so without providing specific, probative details or examples of their impact on her daily life and emotional health, as required to demonstrate substantial physical or mental abuse. In addition, her assertions on motion appear contradictory to her pastor's November 2013 letter in the record indicating that the Petitioner's mental health had improved.

[REDACTED] in her evaluation, affirms [REDACTED] prior diagnoses of the Petitioner as suffering from Post-traumatic Stress Disorder (PTSD), Generalized Anxiety Disorder, and Dysthymic Disorder. She indicates that the Petitioner lives in "perpetual fear" for herself and her family ever since the extortion, but she does not identify, or explain the basis of, this fear. The evaluation indicates that the Petitioner reported that after her involvement with the perpetrators of the criminal activity, she started suffering from several symptoms, including: severe chest pain due to anxiety, inability to sleep, crying all the time, nightmares, inability to function to the point of risking her job, and financial strain leading to having to sell her home at a short-sale. Again, this appears inconsistent with the Petitioner's Pastor's letter, suggesting that apart from financial harm, the

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Petitioner's physical and psychological symptoms had stabilized or even improved. [REDACTED] report notes that the Petitioner's symptoms are the result of the trauma of losing thousands of dollars in a fraudulent immigration scheme. She further indicates that although the degree to which the qualifying crime affected the Petitioner is difficult to quantify, the Petitioner's life has been "forever altered" and the fear affecting her daily functioning is a direct result of having been a victim of the crime. However, as with [REDACTED] evaluation, [REDACTED] provides no specific examples of how the Petitioner's life was altered and her daily functioning affected, and she does not explain how the noted symptoms are related to the commission of the qualifying crime, rather than to the other stressors in the Petitioner's life.

Additionally, after consideration of the factors and standard set forth in 8 C.F.R. § 214.14(b)(1), the psychological harm the Petitioner described suffering does not rise to the level of substantial physical or mental abuse. Although on the Form I-918 Supplement B the certifying official indicated that the perpetrator made threats against multiple victims to have them arrested and deported, she did not provide an account of the specific criminal conduct committed against the Petitioner and made no reference to any emotional or physical harm the Petitioner suffered as a result of the criminal activity. In describing the criminal conduct, the Petitioner indicated generally that at one point, the perpetrator threatened to have her brother and his family deported if her brother contacted law enforcement to report the crime. The Petitioner stated that she felt that she and her family were included in this threat because of the familial relationship. Her statements and the psychological assessments in the record indicate that she has been diagnosed with PTSD, generalized anxiety, dysthymic disorder, and suffers from various physical symptoms as a result of the criminal conduct committed against her. However, she did not describe any incident where the perpetrator threatened her or her family directly, and the permanence and severity of the psychological harm she described is belied by the Pastor's letter. We do not minimize the harm the Petitioner experienced and we recognize that she was financially harmed and felt threatened. However, in considering the nature of the injury inflicted, the severity of the criminal conduct and the harm suffered, and the various other factors in 8 C.F.R. § 214.14(b)(1), the record before us is insufficient to support a finding that the Petitioner suffered physical or mental abuse that was substantial. Accordingly, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not overcome the grounds for denial, as she has not demonstrated that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

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.

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ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of O-M-I-N-*, ID# 16512 (AAO May 25, 2016)