



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

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

In Re: 18949249

Date: FEB. 10, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the record did not establish the Petitioner suffered substantial physical or mental abuse due to qualifying criminal activity. The Director also denied a subsequent motion to reopen and reconsider. We dismissed the Petitioner’s appeal of that denial and the Petitioner’s two subsequent motions to reopen and reconsider.

The matter is now before us on a third motion to reopen. The Petitioner asserts his eligibility for U nonimmigrant status and submits a supplemental affidavit. Upon review, we will dismiss the motion to reopen.

I. LAW

A motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). The Petitioner’s submission on motion contains new evidence, as referenced above.

8 C.F.R. § 214.14(a)(8) defines “physical or mental abuse” as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” A determination as to whether physical or mental abuse is considered “substantial” is based on a number of factors, including: the nature of the injury inflicted; 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 Petitioner). 8 C.F.R. § 214.14(b)(1); *see also* 72 Fed. Reg. 53014, 53018 (Sep. 17, 2007) (stating that determinations as to substantial physical or mental abuse should be made on “case-by-case” basis, looking to both severity of injury suffered by victim and severity of abuse inflicted by perpetrator).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 &N Dec. 369, 375 AAO 2010). Although a petitioner may submit any relevant, credible evidence for us to

consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

In our previous decisions on appeal and motions to reopen and reconsider, which we incorporate herein, we concluded that the Petitioner had not demonstrated he suffered substantial physical or mental abuse as a result of extortion. We previously found, based on the record before us, that the Petitioner was one of many victims of immigration fraud and extortion by individuals, one posing as an immigration attorney. We acknowledged that the Petitioner was diagnosed with post-traumatic stress disorder (PTSD), major depressive disorder-recurrent, and generalized anxiety disorder due to the extortion and threats of removal. We also acknowledged the Petitioner's contention that he lived under the threat of deportation and fear of the criminal perpetrators for years, that he no longer socializes with people outside of work or his children's school, and continues to experience "significant anxiety, physical tension, worries about [his] family's safety, a heightened state of vigilance, problems sleeping including nightmares, difficulty concentrating, and an increased distrust toward others." The Petitioner submitted a psychological evaluation from [redacted] that we accorded less weight due to discrepancies between the evaluation and other documentation in the record. On previous motions, the Petitioner submitted additional evaluations from [redacted] and [redacted]. However, these evaluations did not explain the Petitioner's inconsistent statements. In his affidavits previously submitted on motion, we also found that the Petitioner did not adequately explain the inconsistency between his and his spouse's relocation from Oregon to Washington. Importantly, beyond these discrepancies, we found that neither the Petitioner, [redacted] nor [redacted] described any specific negative effect of the criminal activity on the Petitioner's ability to work or daily life. As such, we determined the Petitioner did not submit sufficient new evidence on prior motion to demonstrate he suffered substantial mental abuse due to extortion, as required by the Act.

On instant motion, the Petitioner submits a new affidavit. The Petitioner provides an explanation for the inconsistencies noted in our previous decision. Specifically, he explains that the inconsistency between the explanation he provided in the record and his wife's explanation she provided to her children's teacher of why they moved from Oregon to Washington is because his wife did not trust the teacher enough to describe the extortion the family suffered through. However, regardless of whether his explanation for this inconsistency is reasonable, we denied the appeal and subsequent motions because he did not demonstrate any significant negative effect of the criminal activity on his ability to work and participate in his sons' education and sports activities.¹ In his newly submitted affidavit, the Petitioner does not suggest that he is unable to work or provide for his family adequately. Regarding his ability to participate in his children's education, he goes on to state that he has suffered "a substantial amount" because his "head isn't always there, and [he's] not able to help [his] kids with their homework." The Petitioner does not describe any other way in which his is unable to participate in his children's education. In addition, the newly submitted affidavit is inconsistent regarding

¹ We note that in his new affidavit, the Petitioner indicates, as he did in the affidavits previously submitted, that he "has become more depressed, with feelings of low self-worth, a lack of energy feelings of guilt, difficulty focusing, and a withdrawal from social life. These symptoms have significantly impaired [his] ability to function." The petitioner describes being suspicious of others and less willing to trust and engage with new or unfamiliar people. [He] used to socialize with people outside of work or [their] children's school, but [he] now limits [his] social interactions to [his] immediate family and [they] rarely leave [their] home. [He] works because [he] has to support [his] family [He has] not been able or willing to make new friends or socialize with others due to an extreme lack of trust and anxiety."

whether he continues to be able to coach his children. The affidavit first states that “in the past, [he] pushed [himself] to coach soccer, but [he] had to give up coaching a few years ago because [he did not] have the energy to coach anymore,” however, subsequently goes on to state that “[he coaches] to spend time with [his] kids.” Since the Petitioner’s statements suggesting that he is unable to coach his children are inconsistent, they are accorded less weight and the preponderance of the evidence does not show that the Petitioner is unable to participate in his children’s sports activities or other daily activities. Therefore, the evidence submitted in support of the new motion to reopen still does not demonstrate any significant negative effect of the criminal activity on his ability to work or participate in his sons’ education and sports activities.

We previously determined that the Petitioner had not submitted sufficient new evidence to demonstrate he suffered substantial mental abuse due to extortion. On instant motion, the Petitioner submits a new affidavit that reiterates his suspicion of others; limited social interactions apart from his immediate family, his work, and kids’ coaching; anxiety; depression; and concern for his family’s personal information and his future safety, however, does not overcome our previous finding that he has not demonstrated that he suffered substantial mental abuse due to extortion.

III. CONCLUSION

As the Petitioner has not satisfied his burden of establishing that he is eligible for U classification, he is ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The motion to reopen is dismissed.