



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

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

In Re: 19809360

Date: FEB. 14, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), as well as a subsequent motion to reopen and motion to reconsider. The matter is now before us on appeal. On appeal, the Petitioner submits evidence previously in the record, new evidence, and a brief arguing that he has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further proceedings.

**I. LAW**

To establish eligibility for U-1 nonimmigrant classification, a petitioner must show that they, *inter alia*, have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act; 8 C.F.R. § 214.14(b)(1). The burden of proof is on the petitioner 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 I&N Dec. 369, 376 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to such evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

## II. ANALYSIS

The Petitioner filed her U petition in 2015. With the petition and the Director's request for evidence (RFE), the Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification; personal declarations; court documents; a news article; a copy of her marriage certificate; a letter from her church; a copy of a university diploma; a certificate of recognition from [REDACTED] and copies of documents related to the derivative petition for her spouse.

In 2020, the Director denied the U petition, concluding that while the Petitioner had established that she was a victim of the qualifying criminal activity of false imprisonment she had not demonstrated that she had suffered substantial physical or mental abuse as a result, per section 101(a)(15)(U)(i) of the Act and 8 C.F.R. § 214.14(b)(1). The Petitioner subsequently filed a motion to reopen and reconsider and submitted new evidence, specifically a psychological evaluation in support of her assertions that she suffered substantial mental abuse. The Director dismissed the combined motions, concluding that the Petitioner had not provided new evidence or precedent decisions to consider and that she did not establish that the decision was incorrect based on the evidence in the record at the time.

With the appeal, the Petitioner submits a brief and another copy of the psychological evaluation. The Petitioner argues on appeal that the Director erred in dismissing the motion because the decision did not address her submission of new evidence. She further contends that this new evidence establishes that she has suffered substantial mental abuse, as required by 8 C.F.R. § 214.14(c)(4), and therefore she has established her eligibility for the U petition.

Upon review, we agree that the Director did not consider the submission of new evidence by the Petitioner on motion, specifically the psychological evaluation detailing the Petitioner's claims of substantial physical or mental abuse. In fact, the Director's decision on motion incorrectly concluded that the Applicant had *not* "provide[d] new evidence" to satisfy the motion requirements at 8 C.F.R. § 103.5(a)(2). Additionally, the new evidence before the Director was new and material to establishing the Petitioner's eligibility. Accordingly, we find it appropriate to remand the matter to the Director to review the new evidence in the first instance in determining whether the Petitioner has demonstrated substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded to the Director for the entry of new decision consistent with the foregoing analysis.