



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20027586

Date: FEB. 15, 2022

Appeal of Nebraska Service Center 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), as the victim of qualifying criminal activity. The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner had not established that he suffered substantial physical or mental abuse as a result of qualifying criminal activity. The Petitioner filed a motion to reopen and reconsider, which the Director also denied. The Petitioner filed an appeal of that decision to this office. On appeal, the Petitioner submits a brief asserting he suffered substantial physical or mental abuse as a result of qualifying criminal activity. 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 dismiss the appeal.

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, 375 (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).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in December 2015 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) signed and certified by a lieutenant in the [] Police Department in [] Utah (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to

“Domestic Violence,” and cited to Utah Code Annotated § 76-5-102 (assault) as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official noted “domestic violence.” When asked to provide a description of any known or documented injury to the Petitioner, the certifying official referenced “scratches on his right shoulder and his chest.” The Petitioner also submitted a statement describing the incident and a letter from a mental health counselor dated September 2015. In response to a request for evidence (RFE), the Petitioner submitted another statement, a licensed clinical social worker’s (social worker) assessment dated August 2020, an arrest report and a second Supplement B. The arrest report provides that in [redacted] 2005, the Petitioner and his spouse were fighting over money and the Petitioner claimed that his spouse scratched him on his chest and back, and she kicked him in the stomach. A technician was called to the scene and took pictures of a scratch on the Petitioner’s chest and right shoulder. The Petitioner’s spouse was given a citation for assault (domestic violence). The Petitioner’s spouse was then convicted of battery under Utah Code Annotated § 11-08-020 in [redacted] 2005, and the conviction record includes a note that the case “involves domestic violence.” The second Supplement B listed battery under Utah Code Annotated § 11-08-020 as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner.

After considering the evidence in the record, the Director denied the U petition in December 2020, concluding that the Petitioner had not established that he suffered substantial physical or mental abuse as a result of qualifying criminal activity. In finding that he has not suffered substantial physical or mental abuse, the Director pointed out that the Petitioner forgave his spouse, they reconciled after the incident, and they have had no other incidents of physical violence. In addition, the Director addressed the social worker’s letter, finding that she was unable to identify any current symptoms of anxiety or depression and she only concluded he could have had post-traumatic stress disorder (PTSD) at the time of the crime. The Director determined that the harm the Petitioner experienced did not significantly impair his ability to function, he has been able to work, he has received help from his church and his spouse, he has no current symptoms, and there is no evidence that he has suffered permanent or serious harm to his appearance, health, or physical or mental soundness.

The Petitioner filed a motion to reopen and reconsider, arguing the Director erred in denying the U petition and submitted new evidence in support, including an updated personal statement and a new mental health evaluation from a different social worker, produced in January 2021. The Director considered the Petitioner’s updated statement and new mental health evaluation, but found that his claims of anxiety, depression, and inability to function properly contradicted his prior statements, and the finding in the social worker’s evaluation that he suffers from adjustment disorder and anxiety contradict his August 2020 evaluation. As such, the Director determined that the grounds of denial were not overcome.

On appeal, the Petitioner argues that he has not fully recovered from the substantial emotional abuse he experienced, and the harm he suffered has impaired his ability to function. He claims that his mental health evaluation from January 2021 and his own statements establish that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity.

B. The Petitioner Has Not Established He Suffered Substantial Physical or Mental Abuse as a Result of Qualifying Criminal Activity

The Act and regulations provide that a petitioner is eligible for U-1 nonimmigrant status if he demonstrates, *inter alia*, that he has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1). The regulations provide that the determination of whether a petitioner has suffered substantial abuse is based on a number of factors, including but not limited to:

The nature of the injury inflicted or suffered; 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 victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

8 C.F.R. § 214.14(b)(1). As discussed above, the Director determined that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of the certified criminal activity. We agree with the Director's determination.

The record reflects that in [] 2005, the Petitioner was in an argument with his spouse over money, she scratched him in multiple areas, and she kicked him in the stomach. The Petitioner provided a mental health evaluation, dated September 2015, in which a mental health counselor mentioned the Petitioner had symptoms consistent with depression and anxiety due to physical and verbal abuse from his spouse. A social worker's evaluation, dated August 2020, referenced domestic violence that the Petitioner experienced in his marriage and noted that he previously had symptoms that were consistent with PTSD and they gradually changed to symptoms of depression and anxiety at the time he was evaluated in 2015. Nevertheless, the social worker concluded that the Petitioner came to her office "without identifiable symptoms of even anxiety or depression" and he works full-time and has a job in the evening. A third mental health evaluation, prepared in January 2021 by a different social worker, noted that the Petitioner endured three years of psychological abuse prior to the [] 2005 physical assault; after the physical assault he lost interest in activities like soccer, could not sleep, had decreased appetite, and became insecure and stressed; he presently experiences symptoms consistent with adjustment disorder with anxiety; and his prior abuse is the root cause of his current anxious distress. In his most recent statement from February 2021, the Petitioner mentions that he loves his spouse, but he is not able to function properly in some daily tasks due to anxiety and depression.

While we remain sensitive to the Petitioner's victimization, the record does not establish, by a preponderance of the evidence, that he has suffered substantial physical or mental abuse as a result of the qualifying criminal activity in [] 2005. As a preliminary matter, the duration of this incident was short and at the time of the incident, the Petitioner did not seek out or require medical treatment for physical injuries or mental health treatment for any trauma he may have experienced. Since the incident, the Petitioner has not sought any medical treatment for physical injuries and his three mental

health evaluations were prepared between 10 to 16 years after the criminal conduct occurred. In the first evaluation, prepared in 2015, the mental health counselor noted that the Petitioner was experiencing symptoms consistent with depression and anxiety and that she would see him for at least three months and follow up for another year. There is no evidence in the record that any follow up occurred. In the second evaluation, prepared in August 2020, the social worker determined that the Petitioner did not have identifiable symptoms of anxiety or depression at the time of the evaluation. In the third evaluation, prepared in January 2021 and after the denial of the U petition, the social worker detailed difficulties the Petitioner experienced after the criminal incident and referenced current symptoms consistent with adjustment disorder with anxiety. However, the social worker's finding that the Petitioner is currently experiencing anxiety is inconsistent with the second evaluation. Neither the social worker nor the Petitioner addresses or discusses the disparate information in the two evaluations, produced only five months apart. We acknowledge the Petitioner's assertion that he is unable to function properly in some daily tasks, however, he has not provided specific details of these difficulties, and how they relate to his victimization in [redacted] 2005. Moreover, the record reflects that the Petitioner works full-time, has a second job, and is raising two children with his spouse.

Although the Petitioner experienced some difficulties after the qualifying criminal activity occurred, looking to the standard and relevant factors as articulated in the regulation, and the entirety of the record, including the evidence submitted on appeal, the Petitioner has not established by a preponderance of the evidence that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity as section 101(a)(15)(U)(i)(I) of the Act requires. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.