



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

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

In Re: 20346718

Date: FEB. 23, 2022

Appeal of Vermont 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of qualifying criminal activity. The Petitioner filed an appeal with our office, the Administrative Appeals Office (AAO) and we subsequently summarily dismissed the appeal. Now, the Petitioner files motions to reopen and reconsider with the AAO.¹ On appeal, the Petitioner submits a brief and additional evidence. We review 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 combined motions.

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, and we will grant the motion to reopen.

A motion to reconsider must 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 policy. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a 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).

¹ We note that the Petitioner's I-290, Notice of Appeal or Motion, only indicates that he is moving to reopen his case. However, in his brief submitted on appeal, he argues that his appeal should be reconsidered as well. Therefore, we will treat his motion as a combined motion to reopen and reconsider.

A “victim of qualifying criminal activity” is defined as an individual who has “suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term “‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners’ helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). 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 all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

The Petitioner filed his U petition in October 2015 with a Supplement B signed and certified by a lieutenant of the family & sex crimes section of the police department in [REDACTED] Arizona (certifying official). The certifying official checked the box indicating that the Petitioner was the victim of criminal activity in [REDACTED] 2007 involving or similar to “Felonious Assault.” The certifying official listed Arizona Revised Statute (ARS) section 13-1204, aggravated assault, as the specific statutory citation investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, the certifying official stated: “[The Petitioner] was at work at the incident location when he observed an unknown subject inside the [Petitioner’s] vehicle and attempting to steal it. The suspect fled on foot and the [Petitioner] caught him with the assistance of a co-worker. While attempting to detain the suspect, the suspect bit the [Petitioner] on the arm, breaking the skin and drawing blood.” The Supplement B provided further detail about the incident, including that the Petitioner suffered “minor scrapes and abrasions, and a human bite to the arm that broke the skin.” The Petitioner submitted a police report corroborating the Supplement B. When the Petitioner filed his U petition, he also submitted a personal statement, a copy of a letter from his brother, and copies of relevant Arizona statutes.

The Director issued a request for evidence (RFE) explaining that the record did not establish that the Petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity. In response, the Petitioner provided an additional personal statement, a copy of a one-page psychological evaluation from 2020, six additional letters from family and friends, copies of country condition reports, and other various documents. The 2020 psychological evaluation described how the Petitioner suffered from posttraumatic stress disorder (PTSD) and severe anxiety from his experiences in Venezuela. The evaluation went on to state that the [REDACTED] 2007 incident triggered both his PTSD and anxiety “to the extent that he feels unsafe in his usual surroundings.” The Petitioner’s personal statements indicated that he was bitten on the arm and had scratches on his neck and forehead. He

also stated that he suffered from a panic attack on the day of the incident due to the anxiety of the situation.

After reviewing the evidence in the record, the Director denied the U petition and concluded that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of qualifying criminal activity. On appeal, the Petitioner, through counsel, submits a brief arguing that the Director erred in her finding and submits a 2021 psychological evaluation in support of his argument.

Upon review of the record, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of having been a victim of felonious assault. Our determination considers various 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). We determine, in our sole discretion, the credibility of and the weight to give all of the evidence. *Id.* § (c)(4); section 214(p)(4) of the Act.

We acknowledge the Petitioner endured a difficult and dangerous situation when he stopped a man from stealing his car in [] 2007. The record shows that the Petitioner was bitten on the forearm and was scratched on the neck and forehead. However, in the Supplement B, the certifying official described his injuries as “minor.” The Petitioner’s personal statement indicated that he “recovered without major injuries.” The letter from the Petitioner’s brother stated that the Petitioner “suffer[ed] minor injury” and “[right] now [he sees] [the Petitioner] function as normal.” While one of his statements specified that he was “in serious pain” after he “started bleeding and noticed a huge gash on [his arm],” the Petitioner did not submit evidence that he needed or requested medical attention for the physical injuries or that the injuries caused lasting pain. His statement discussed suffering from a panic attack on the day of the incident, however, does not describe additional or reoccurring panic attacks after the incident. Additionally, while the 2020 psychological evaluation indicated that the Petitioner was diagnosed with a generalized anxiety disorder and PTSD, the conditions stemmed from his past experiences in Venezuela and were not caused by the [] 2007 incident. Also, the more recent 2021 psychological evaluation indicates that his symptoms “do not meet the diagnostic criteria for [an anxiety] disorder” and does not indicate that he suffers from PTSD. Finally, while the 2021 psychological evaluation indicates that he could not concentrate on school or work after the incident, there is no indication that there was permanent harm to the Petitioner’s mental soundness, he went on to complete two undergraduate degrees, and there is no evidence that indicated he was unemployed or underemployed due to the 2007 incident.

Therefore, the evidence in the record, including the newly submitted evidence on appeal, demonstrates that the assault was a one-time occurrence, that did not result in lasting physical or emotional effects, impair the Petitioner’s ability to function, or cause serious long-term consequences. For these reasons, the Petitioner has not established, by a preponderance of the evidence, that he has suffered substantial physical or mental abuse as a result of the assault committed against him, as required by 8 U.S.C. section 101(a)(15)(U)(i)(I) of the Act.

On instant motion, the Petitioner submits a new psychological evaluation that reiterates the symptoms described in past evaluations, however, does not overcome the Director’s finding that he has not

demonstrated that he suffered substantial physical or mental abuse due to the qualifying criminal activity. Therefore, he has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not shown that our decision was based on an incorrect application of law or policy and accordingly has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.