



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

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

In Re: 19271107

Date: FEB. 28, 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). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and subsequent motion to reopen and motion to reconsider, concluding that the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and previously submitted evidence reasserting his eligibility. 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 the issuance of a new decision.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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.

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* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sep. 17, 2007) (stating that determinations as to substantial physical or mental abuse should be made on a “case-by-case” basis, looking to both the severity of injury suffered by the victim and the severity of the abuse inflicted by the 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 I&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

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 detective supervisor in the [redacted] area of the [redacted] Police Department in [redacted] California (certifying official). The certifying official checked a box indicating that in [redacted] 2015, the Petitioner was the victim of criminal activity involving or similar to “Felonious Assault” and “Other: Assault/Deadly Weapon,” and cited to section 245(a)(1) (felonious assault with deadly weapon or instrument other than a firearm) of the California Penal Code (Cal. Penal Code) 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 indicated that “two defendants assaulted [the] victim One defendant used a box cutter knife to attack [the victim].” When asked to provide a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner “sustained lacerations to the left side of his head, causing serious bodily injury . . . treated at a hospital[, and] suffered physical and emotional trauma as a result of the assault.”

In response to the Director’s request for evidence (RFE), the Petitioner submitted a second Supplement B signed and certified by the police detective supervisor of the [redacted] Police Department (second certifying official). The second certifying official checked the box indicating that the Petitioner was the victim of “Felonious Assault” and described his injuries as follows: “The applicant was treated at a local hospital for multiple lacerations to the left side of his face.”

The arrest report accompanying the Supplement B classified the offense as an assault with a deadly weapon under section 245(a)(1) of the Cal. Penal Code. The arrest report reflects that the Petitioner was on his way home, where the two perpetrators were waiting for him. One perpetrator held the Petitioner’s arms behind his back and the other perpetrator hit him with his fists before pulling out a box cutter from his pocket and swinging it at the side of the Petitioner’s head. The Petitioner was then able to break free from them and flag down a police vehicle on the street. The report further noted that the two perpetrators are the brothers of the Petitioner’s sister-in-law, with whom the Petitioner lived, among others.

In his initial statement, dated November 2015, the Petitioner stated that he didn’t know why his brothers-in-law assaulted him. He indicated that one perpetrator was arrested and convicted but fled to Mexico, where he lives near members of the Petitioner’s family. He stated that he fears returning to Mexico as he is afraid the perpetrator will “take revenge” on him because he testified against him

and that it is easy to get away with crime in Mexico. He also stated that he was taken to the hospital after the assault to get stitches and that he “had headaches for several days after the incident.”

In response to the Director’s RFE, the Petitioner submitted a second statement, dated October 2020, stating that he was stabbed with a box cutter and had to seek medical treatment at the hospital where he received stitches and later returned twice to remove the stitches and sutures. He further explained that “[a]s [a] result of the stabbing[, he] had pain from the open wound and had headaches afterwards.” He stated that “[e]motionally [he] was very jumpy and paranoid [and] felt like [he] could get attacked at any moment and was on constant guard[,] ma[king him] not want to leave the house.” He then stated that “[b]eing a victim of crime left [its] mark because it made [him] less trusting of people and to this day[, he] always look[s] over [his] shoulders at [his] surroundings to make sure [he is] okay.”

The Director denied the U petition, concluding that the Petitioner had not demonstrated he suffered substantial mental or physical harm as a result of qualifying criminal activity. The Director noted that the 2015 assault was of short duration, the Petitioner’s injuries were never life threatening, and he was sent home from the hospital in a short amount of time after receiving a few stitches. The Director also noted that the paperwork from the hospital for the night of the incident, and follow-up visits to remove stitches and sutures, indicated that the Petitioner appeared well, was calm and cooperative, and did not show any signs of distress. The Director then acknowledged that the photographs of the Petitioner’s injuries show he bled quite a bit, but cited to a medical article outlining the amount of blood typically expected when wounded on the head.

On motion to reopen and motion to reconsider, the Petitioner submitted a third statement, dated February 2021, stating that the assault “had a profound effect on [him]” and “left [him] marked.” He specifically addressed his “shame” for “not [being] able to defend [him]self” as his traditional Mexican background expects. He indicated that, due to this background, he was also “ignorant of the benefits of therapy,” and thought it was “something that is not really accessible to people like [him].” He stated that, after talking to the therapist, he “realize[d] how much [his] attack has impaired [him]” and he knows it is something he has to work through “so that [he] can feel like [him]self again.” Finally, he indicated that he was currently impaired with COVID-19 and once his symptoms were under control and he could return to work to recover the money he had lost while he was unable to work, he “would like to seek therapy [as he] think[s] it will help [him].”

The Petitioner also submitted a Psychosocial Evaluation completed in February 2021 by a Licensed Marriage and Family Therapist (therapist), in which he detailed the incident and explained the familial relationship with his attackers. The Petitioner also detailed his fears of returning to Mexico, stating that both of his attackers were now residing near his family’s home in [REDACTED]. The Petitioner stated that he suffered from pain as a result of the lacerations on his head and experienced “headaches that continue until today.” The therapist indicated that he expresses a high level of symptomatology associated with anxiety, which “may significantly interfere with information-processing functions and result in poorly planned responses to environmental pressures.” The therapist also indicated that the Petitioner “is at significant risk for suicide” and should be monitored for suicidal ideation and hopelessness. The therapist detailed the Petitioner’s responses to various criteria used to make a diagnosis and he specifically indicated that he experiences nightmares, anxiety, shame for not defending himself better, avoidance, lack of concentration, difficulty in expressing himself, feelings of emptiness, and irritability, all occurring since the night of the incident. Most notably, the Petitioner

expressed his lack of energy and interest in spending time with his children. He specifically addressed his feelings of guilt because he finds that he would rather sleep than take his children out. The therapist then confirmed a diagnosis of posttraumatic stress disorder (PTSD) and persistent depressive disorder (PDD) as a result of his attack, and indicated that “the psychological harm is both serious and long lasting and dictates psychotherapy.” She further strongly recommended that the Petitioner receive individual psychotherapy to help reduce his PTSD and PDD, improve his stress tolerance, and teach him how to manage his mood.

In dismissing the Petitioner’s motion to reopen and motion to reconsider, the Director reiterated the statements in the denial. The Director added that, although the Petitioner was diagnosed with PTSD and PDD, his daily life did not appear to be affected as he stated that “he is taking classes in the evenings,” “states that he would like to get a license to become a contractor and have his own business,” and “welcomed two children to his family” in 2017 and 2020.

On appeal, the Petitioner asserts, through counsel, that he suffered substantial mental abuse as a result of the incident. He states that the effects of the incident “continue to follow [him] in his everyday life” as he has trouble concentrating and has missed out on job opportunities, and his irregular sleep patterns impair his concentration and prevent him from being a good father to his children. The Petitioner also contends that “it is not uncommon for victims to carry on in their lives and raise and provide for their families on spite of crippling depression, anxiety[,] and PTSD.”

B. The Petitioner Has Suffered Substantial Mental Abuse as a Result of the Qualifying Criminal Activity

As stated above, 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.

At the outset, and contrary to the Director’s determination, the evidence in the record and outlined above establishes that the Petitioner has endured lasting psychological effects from the assault forming

the basis for the U petition. The fact that the Petitioner has continued living his life, is attending evening classes, aspires to have his own business, and welcomed two children, does not call into question the severity of the psychological injury the Petitioner suffered as a result of the incident. In fact, the psychosocial evaluation directly addresses the Petitioner's children and indicates that he feels incapable of spending time with them or taking them out due to his depressive state and desire to sleep. Further, the therapist completing the psychosocial evaluation diagnosed the Petitioner with PTSD and PDD, and outlined the symptoms he continues to experience on a daily basis in the report, detailed in part above, all of which are in relation to the qualifying criminal activity.

In this regard, a review of the record indicates that in [] 2015, the Petitioner was stabbed and cut with a boxcutter multiple times on the left side of his head and face while being held down by a second perpetrator, an offense that was investigated as a felony assault with a deadly weapon or instrument under California law. When police officers arrived at the scene, the Petitioner was bleeding from the attack and was transferred to a nearby hospital for emergency care. In fact, the first Supplement B indicated that the Petitioner "sustained lacerations to the left side of his head, causing serious bodily injury . . . [and] suffered physical and emotional trauma as a result of the assault." He received stitches and suffered from pain and headaches afterward. Furthermore, the perpetrators of the attack were close family members, as they were the brothers of the Petitioner's sister-in-law, with whom the Petitioner lived at that time. As a result of that assault, the Petitioner suffered physical injuries, received emergency care, and continues to endure nightmares, anxiety, shame, feelings of emptiness, and other related emotional trauma, as documented in his statements and the psychosocial evaluation. Considering the foregoing, the Petitioner has established by a preponderance of the evidence that he has suffered substantial mental abuse as a result of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(1). The Director's determination to the contrary is withdrawn.

III. CONCLUSION

The Petitioner has overcome the Director's sole ground for denying his U petition. Therefore, we will remand the matter to the Director for consideration of whether the Petitioner has met the remaining eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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