



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

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

In Re: 19271548

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 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 additional 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 dismiss the appeal.

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

In October 2015, the Petitioner filed his U petition with a Supplement B signed and certified by the “AC/Criminal Investigations Command” of the [redacted] Police Department in [redacted] Texas (certifying official). The certifying official checked the box indicating that in [redacted] 2010, the Petitioner was the victim of “Other: Aggravated Robbery.” When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official stated the following: “The applicant was approaching his car preparing to go to work when the armed suspects blocked his vehicle in and struck him in the head with a gun. The suspects then robbed the applicant of his property prior to fleeing the scene.” Regarding the description of any known or documented injury to the victim, the certifying official stated that “[t]he applicant sustained superficial injuries as a result of this incident.” The Offense Report accompanying the Supplement B specifically identifies the Petitioner’s “condition [as] apparent minor injury.”

In response to the Director’s request for evidence (RFE), the Petitioner submitted a second Supplement B signed and certified by the Assistant Chief of Criminal Investigations of the [redacted] Police Department (second certifying official). The second certifying official checked the box indicating that in [redacted] 2010, the Petitioner was the victim of “Felonious Assault” and described his injuries as follows: “Applicant sustained a knot on his head and scratches on his arm in this incident.”

In his initial statement, the Petitioner detailed that, as a result of the above-referenced incident, it “took [him] about two months to be able to go back out in the morning with confidence because [he] was afraid to go to work in the mornings when it was still dark outside.” He stated that he felt like he was being watched and any car he did not recognize got his heart racing in fear of the same thing happening again. He stated that he was depressed and lost his job, which resulted in losing his car because he could not make payments. He stated that his family’s life was in “shambles” and he felt like he was no longer capable of supporting and protecting them. He stated that he suffered two months of depression and constant nightmares where he would relive the robbery and would wake up scared at night. However, he then stated that “[i]t was not until [he] got a new job that [he] felt [his] life started going back to normal [and he] began to regain [his] motivation and slowly came out of the depression caused by the robbery.”

The Petitioner also submitted a statement from his spouse, where she detailed that as a result of the incident, the Petitioner was “very beat up and shaken up in a way that [she] had never seen him before.” She stated that he was “not the same after that terrifying experience,” that he fell into depression right after, and that he was having difficulties going to sleep and staying asleep due to nightmares. However, she then stated that “[t]his went on for several months until he slowly came back to his

normal self” and that she is “very glad he has been able to move on from that” though she believes it would also be on his mind.

In response to the Director’s RFE, the Petitioner submitted a second statement detailing his condition following the incident as follows:

The first couple of months after the robbery, I remember that I would hardly sleep. I was always listening for any little noise that I thought could be the thieves coming back to harm me and my family. When I would hear something, my heart would start racing and I would sweat. There were days that I would wake up so afraid, that I would call into work. My boss told me after three months of me constantly missing work due to fear that he could not employ me anymore because he needed someone that was constant at work. I was too unstable . . . I also fell into a habit of drinking because I wanted to not think about what was happening to me. I started to have problems in my marriage as a result of the constant drinking . . . It was about two years later that I was finally able to start working more constantly and was finally able to move out of that place. When I moved out of there, I started to feel a lot better. I felt almost normal. I was working over 50 hours per week. Things were going well. I was feeling good about my future because I was able to apply for this U Visa, so I was feeling happiness and hope in my life. The fear was always present though.

The Petitioner then stated that when he had to remember what happened in order to write his first statement, he began to feel fearful again. He recounted an incident at work in October 2015,¹ when “the robbery was fresh on [his] mind again” and he was welding when suddenly he felt as if someone was behind him. When he turned around suddenly to check behind him, he slipped and fell 17-20 feet from the platform where he was standing, and suffered bruising on his face and a broken right knee, which took three surgeries to repair. He stated that he began to feel depressed again and the fear and trauma from the incident returned as well. The Petitioner then recounted another incident where, about one year after his fall, he was pumping gas when a man approached him asking for money. He stated that he “hung up the pump and ran into [his] truck,” but his wife told him not to be afraid because the man was just asking for money. The Petitioner finally stated that “when [his] knee healed and [he] was able to return to work, [he] started feeling normal again. But after having to talk to the counselor for [his] evaluation, all the thoughts and memories about the robbery came back once again, just like the first time that [he] had to write about it.” He stated that he’s been feeling the fear again, is clearly still affected by the trauma of that crime, and will seek the help the counselor recommended.

The Petitioner also submitted a second statement from his wife recounting the day of the incident and stating that “everything changed from that moment.” She stated that after the incident, the Petitioner did not sleep well and did not let her and her daughter go outside by themselves as he was afraid of other people getting close to them. She further stated that they had to change apartments because the Petitioner was afraid the perpetrators would come back because they knew where they lived.

¹ The instant U petition was filed in October 2015.

The “Psychosocial Evaluation Report,” completed by a Licensed Professional Counselor (counselor) in June 2020, almost 10 years after the incident, includes a detailed account of the incident and the Petitioner’s experiences afterward as follows:

[The Petitioner] explained that the crime he was victim to had a profound and devastating impact to his overall psychological well-being and life. [The Petitioner] processed that in the first three weeks after the assault, he was overwhelmed with fear of leaving his home. He recalled that he would look outside his window every day, anxiously looking to see if the assailants had returned to harm him and his family for having called the police. [The Petitioner] indicated that he began to experience significant sleep disturbances, experiencing nightmares of similar themes of the crime he was victim to He stated that shortly after he and his wife moved homes but this did little to alleviate his fears. He recalled that in the months following the crime he was unable to function due to the great level of anxiety and persistent fear and struggled to adequately cope. He processed that this led him to begin to excessively drink as a means to cope He expressed he began to notice being extremely distracted at work and home to the point where he was not present and unable to carry out his daily responsibilities.

[The Petitioner] expressed that the biggest hurdle he faced after his victimization was that he began to feel fear when around individuals that resembled his assailants. [He] remarked that he noticed he began to feel tense and fearful when within close proximity of someone who resembled his attackers he would notice involuntary physical reactions manifest such as shaking, sweating, and startling easily when around someone who resembled his attackers. He expressed that his fear ultimately led him to experience a tragic accident at work, which [left] him with a significant physical limitation

The counselor then recounted the events of the Petitioner’s accident while at work and indicated that he stated that he “heard his name be called from behind him [and] when he turned around[,] he saw a male that resembled his attackers and involuntarily startled, overstepped where he was working from, and fell from a height of [16] feet to the ground.” She then indicated that the Petitioner expressed that he began to develop severe symptoms of depression during his two and half years of recovery and inability to work and provide for his family, which further exacerbated his psychological impairment. The counselor then confirmed a diagnosis of posttraumatic stress disorder (PTSD) and concluded that “[the Petitioner’s] symptoms, reported throughout [her] assessment and clinical interview[,] seem [to] be correlated to the trauma he experienced from his victimization.” She further strongly recommended that the Petitioner receive individual therapy using an approach to manage and reduce symptoms of PTSD and indicated that “his prognosis is good if he receives quality therapeutic intervention.”

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 2010 assault was a single occurrence of short duration that did not require any emergency room care and did not result in any lasting physical effects. The Director also noted that the Petitioner provided a mental health evaluation conducted almost a decade after the date of the incident, correlating with receipt of the RFE from USCIS. The Director further noted that in the intervening

decade since the incident in [REDACTED] 2010, the Petitioner did not provide any proof that he required any mental or physical care directly resulting from the incident and that one evaluation in a span of a decade does not indicate substantial abuse. The Director then acknowledged the affidavits and medical discharge papers from the accident he experienced at work in 2015, which he stated was related to the incident, and concluded that statements by themselves indicating that incidents are related carried limited weight without additional documentary evidence. In dismissing the Petitioner's motion to reconsider, the Director reiterated the statements in the denial. While acknowledging the impact the criminal activity had on the Petitioner, the Director concluded that the record did not establish that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse.

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

On appeal, the Petitioner asserts, through counsel, that he suffered substantial mental abuse as a result of the incident. He states that the incident continued to haunt him for years to come, he remains traumatized by the incident to this day, and mentions that discussing the incident, when writing his statements or being interviewed by the counselor, made him "feel the fear again." The Petitioner's counsel then cites to two unpublished decisions where we concluded that a petitioner suffered substantial mental abuse. According to counsel, both cases share similarities to the Petitioner's case where the crimes committed against them were a single occurrence and of a short duration, they lost their jobs, they obtained a single mental health evaluation, they were diagnosed with PTSD, and they had similar symptoms. However, as acknowledged by the Petitioner, the cited decisions were not published as precedent and, accordingly, do not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

The Petitioner submits a third statement on appeal, detailing his condition following the incident as follows:

My life has changed dramatically since I was attacked Within the first week of my attack I lost my job because I did not want to leave the house. I was afraid the men were waiting outside to attack me again, leaving my wife and daughter alone at home. I began to take refuge in alcohol because it was a way to forget what happened to me

I thought I would be able to overcome my trauma from the attack, but I kept being reminded of the terrible event

The Petitioner again recounts the previously discussed incident at work in October 2015, when he "was triggered to remember [his] attack and injured [him]self severely." He states that he was at work welding from a platform about 20 feet from the ground and while on the platform, he lifted his mask and turned around. He states that out of the corner of his eye he could see a man walking toward him from behind, "in a way that was similar to how [his] attackers approached [him]" and he suddenly felt scared and stepped backwards, causing him to fall from the platform. The Petitioner also recounts

another incident where he was driving with his wife and was stopped at a traffic light. As they were stopped, he states that a man approached the car asking for money and he “was so terrified that [he] felt cold.” He states that his wife noticed that he was afraid and calmly explained to him that it was okay and that the man was just asking for money. He states that he “had to force [him]self to calm down and keep driving.”

The Petitioner also submits a third statement from his wife recounting the day of the incident and stating that “[s]ince that day, [she] saw him differently, he was distrustful of anyone who approached him” and could not sleep well for a long time. She states that the Petitioner lost his job because he was afraid to leave and leave her and her daughter alone since the perpetrators knew where they lived and that for several days, the Petitioner did not want to leave the apartment because he thought a similar incident would happen again. She states that “[s]ome time later, the memories of that episode returned [and o]ne day at his work[,] he remembered the accident and told [her] how he felt as if he had relived it again” when he fell and broke his knee, hurt his hands, and his mouth. She then states that “[i]t took two years of therapy and recovery for him to resume his normal life again.”

While we remain sensitive to the Petitioner’s victimization, the Petitioner has not established on appeal, by preponderance of the evidence, that he suffered substantial physical or mental abuse as a result of the assault committed against him. First, we acknowledge that the incident involved a robbery at gunpoint. However, as highlighted by the Director, the record indicates and the Petitioner does not dispute that the incident was a single occurrence of short duration and did not result in permanent or serious physical injury to his person. Moreover, the Petitioner’s accounts of his experiences after the incident and its impact on his health and mental soundness are inconsistent throughout his statements in the record. Most notably, the Petitioner’s statements referencing his firing are inconsistent. At the time of filing, the Petitioner stated that “it took [him] about two months to be able to go back out in the morning with confidence because [he] was afraid to go to work in the mornings when it was still dark outside.” Then he stated that he lost his job, but he did not provide a timeframe for the job loss. In response to the RFE, the Petitioner stated that his boss advised him that “*after three months of . . . constantly missing work due to fear[,] . . . he could not employ [him] anymore because he needed someone that was constant at work*” (emphasis added). Then, on appeal, the Petitioner states that “*[w]ithin the first week of [his] attack[, he] lost [his] job because [he] did not want to leave the house*” (emphasis added).

Further, his statements referring to his accident at work in October 2015 are inconsistent. In response to the RFE, the Petitioner stated that “the robbery was fresh on [his] mind again” after filing his U petition. He stated that he was welding while at work when suddenly he felt as if someone was behind him and when he turned around suddenly to check behind him, he slipped and fell. Then, at his Psychosocial Evaluation interview, the counselor recounted that the Petitioner stated that he “heard his name be called from behind him [and] when he turned around[,] he saw a male that resembled his attackers and involuntarily startled, overstepped where he was working from, and fell from a height of [16] feet to the ground.” On appeal, the Petitioner recounts that he had been “triggered to remember [his] attack” and while he was at work welding from a platform about 20 feet from the ground, he lifted his mask and turned around. He states that out of the corner of his eye he could see a man walking toward him from behind, “in a way that was similar to how [his] attackers approached [him]” and he suddenly felt scared and stepped backwards, causing him to fall from the platform. Similarly, the Petitioner’s statements referring to the incident with the man asking for money are also

inconsistent. In response to the RFE, he stated that about one year after his fall at work, he was pumping gas when a man approached him asking for money. He stated that he “hung up the pump and ran into [his] truck,” but his wife told him not to be afraid because the man was just asking for money. On appeal, he recounts that he was driving with his wife and was stopped at a traffic light. As they were stopped, a man approached the car asking for money and he “was so terrified that [he] felt cold.” He states that his wife noticed that he was afraid and calmly explained to him that it was okay and that the man was just asking for money. He states that he “had to force [him]self to calm down and keep driving.” In this case, the Petitioner has not provided any explanation for the inconsistencies presented throughout his statements and, as a result, has not established, by a preponderance of the evidence, that these incidents—which occurred after the filing of his U petition—are relevant to the substantial physical or mental abuse he suffered as a result of his prior victimization.

Relatedly, and critically, the Petitioner’s statements regarding his life returning to normal after the incident indicate that the assault did not result in lasting physical effects, impair the Petitioner’s ability to function, or cause serious long-term consequences. At the time of filing, the Petitioner specifically stated that he suffered two months of depression and constant nightmares where he would relive the robbery and would wake up scared at night. Then he stated that “[i]t was not until [he] got a new job that [he] felt [his] life started going back to normal [and he] began to regain [his] motivation and slowly came out of the depression caused by the robbery. It was a very hard blow to overcome but [he was] very thankful to be here today, alive and well.” In response to the RFE, he stated that about two years after the incident he was able to work more consistently and was finally able to move out the home where the incident occurred, and that when they moved, he “started to feel a lot better.” He said that he “felt almost normal” and that things were going well. The Petitioner’s wife also stated, at the time of filing, that his sleep difficulties “went on for several months until he slowly came back to his normal self” and that she is “very glad he has been able to move on from that.” Here, the Petitioner and his spouse made these statements at the time filing and in response to the RFE. However, in response to the RFE, the Petitioner also stated that he “ha[s] been feeling the fear again [and he] is clearly still affected by the trauma of that crime.” On appeal, the Petitioner states that “[he] was especially sad because [he] hated how [his] attack could continue to affect [him] so severely.” Borrowing from the analysis above, the Petitioner has similarly not provided any explanation in the record to reconcile these inconsistent statements. That is, he has not explained how he and his spouse initially stated that his life returned to normal within two months to two years after the [redacted] 2010 robbery and later stated that he still lives in fear and remains severely affected by his victimization.

We recognize and do not seek to diminish the fear the Petitioner felt during, as a result of, the events that occurred in [redacted] 2010. However, the inconsistencies outlined above, coupled with the Petitioner’s statements regarding his life going back to normal, raise concerns about the substantial abuse he suffered. While the 2020 psychosocial evaluation diagnosed the Petitioner with PTSD and indicated he suffered from symptoms of fear, hypervigilance, anger, shame, anxiety, sadness, and sleep disturbances, the evaluation was conducted over 10 years after the incident in question and subsequent to the Director’s RFE, and the record as a whole does not indicate that the Petitioner’s diagnosis and feelings have significantly impaired his ability to function. Further, while the evaluation in the record establishes that the Petitioner was advised to receive therapy in 2020, the Petitioner does not indicate that he followed the recommendation, or explain why he was precluded from doing so. Finally, the

counselor did not correlate the effects of PTSD on the interpretation or recollection of events through time, such that the discrepancies outlined above could be explained.

Looking to the standard and relevant factors as articulated in the regulation, the entirety of the record, including the evidence submitted on appeal, the harm the Petitioner suffered as a result of qualifying criminal activity does not constitute substantial physical or mental abuse as section 101(a)(15)(U)(i)(I) of the Act requires.

ORDER: The appeal is dismissed.