



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

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

In Re: 22324608

Date: JUL. 27, 2022

Motion on Administrative Appeals Office 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), concluding that the Petitioner did not establish she was the victim of a “qualifying criminal activity,” as required. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). We dismissed the Petitioner’s appeal, and the matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

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.

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).

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 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) from a law enforcement official, certifying the petitioner's helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and it gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

The petitioner must also provide a statement describing the facts of their victimization, as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although a petitioner may submit any evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. PROCEDURAL HISTORY

The record reflects that in September 2015, the Petitioner filed a U petition and a Supplement B signed and certified by an [redacted] California police department certifying official. The Petitioner also submitted a police report, personal declaration, medical documents, and California Penal Code (Cal. Pen. Code) definition information.

The Director denied the U petition on grounds that the Petitioner did not establish she was the victim of a qualifying criminal activity, which is a preliminary requirement to demonstrating eligibility for U nonimmigrant classification. Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(14). The Petitioner's "qualifying criminal activity" claim is based on assertions and evidence reflecting that she was the subject of bullying and assaults by a former school mate, and that the assaults (being pushed, bumped, and kicked) caused her fear, and caused physical and medical conditions to worsen.

The Director found that the Petitioner demonstrated, by a preponderance of the evidence, that she was the victim of "battery" under her state's California Penal Code section 242 (which is defined as "any unlawful use of force or violence upon the person of another"). The Director determined, however, that the offense of "battery" is not included in the enumerated list of qualifying crimes set forth at section 101(a)(15)(U)(iii) of the Act. The Director determined next that the Petitioner also did not establish that the California Penal Code section 242 battery offense that she was a victim of, was substantially similar to the felonious assault crime set forth in the enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act. The Director pointed out that the elements of the battery offense set forth in California Penal Code section 242, did not include any of the aggravating factors that were required under the California Penal Code section 245 "felonious assault" offense (such as the use of a firearm or other deadly weapon, the use of force likely to produce great bodily injury, or the sustainment of great bodily injury). The Director also noted that the record also contained no indication that law enforcement officials investigated or prosecuted a California Penal Code section

245 felonious assault crime in the Applicant's case. The Director concluded that the Petitioner therefore did not establish she was the victim of qualifying criminal activity, as required.

In our previous decision, incorporated here by reference, we determined that the Director did not err in his decision, and determined that the record demonstrated that the Petitioner was the victim of a police investigated offense of battery (which California Penal Code section 242 defines as "any unlawful use of force or violence upon the person of another"). The record further did not reflect that she was the victim of an assault with a deadly weapon or force likely to produce great bodily injury, as required under the California Penal Code section 245 felony assault law. Consequently, we determined that the fact that the certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to felonious assault, in response to Part 3.1 of the Supplement B, was insufficient to establish that the Petitioner was a victim of that offense, as claimed.

III. ANALYSIS

As stated, a motion to reopen must be based on new facts which are supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. With the present motion, the Petitioner submits two letters from her previous doctors, copies of opinions from various law firm websites, and copies of California Penal Codes she feels are related to her case. The letters from the Petitioner's doctors discuss her medical conditions, and noted that around the time of the incidents, she was seen for treatment. These letters do not discuss or address any of the issues discussed in our prior decision, and only restate the fact that the Petitioner has underlying physical conditions which were aggravated by the bullying she experienced.

We do not consider the opinion articles, titled "Crimes Against Disabled Persons in California," "Assault By Means Likely to Produce Great Bodily Injury – California Penal Code § 245(a)(4)," and "Hate Crimes Against People with Disabilities" to be informative in the Petitioner's case. These articles are written from a research perspective and are not opinions or decisions issued by a relevant authority. The articles provide possible legal arguments and narratives for both perpetrators and victims of these types of crimes, to be presented before a court, but as noted in our prior decision, the Petitioner does not provide a legal authority that indicates that the incident perpetrated against the Petitioner had aggravating factors investigated or detected by law enforcement.

In support of her arguments on motion, the Petitioner submits a copy of Cal. Penal Code § 422.55, which states that a hate crime "means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) Disability . . ." While the Petitioner does suffer a disability, the Supplement B did not certify the Petitioner as being the victim of this statute, nor does the narrative contained in the Supplement B indicate that the Petitioner's disability was a reason for the bullying suffered by the Petitioner.

The Petitioner also submits a copy of Cal. Penal Code § 368, which is titled "Crimes Against Elders, Dependent Adults, and Persons with Disabilities," which the Petitioner argues indicates "the activity and the status of the victim would lead to an enhancement of the underline [*sic*] crime, battery, to a felony imprisonment." However, we note that the language of this section of the Cal. Penal Code discusses crimes against adults with disabilities, specifically, and the Petitioner was a child at the time

of the certified incident. The introductory paragraph of § 368(a) stated, “[t]he Legislature finds and declares that elders, *adults* whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and *adults* admitted as inpatients to a 24-hour health facility deserve special consideration and protection” (emphasis added). Therefore, the Petitioner still has not provided a relevant authority, as noted in our previous decision, that her disability would have been considered an aggravating factor. The Petitioner also submits a copy of the California Sentencing Guidelines and a copy of Cal. Penal Code § 240-245. However, as noted in our previous decision, the crime against the petitioner was only investigated as Cal. Penal Code § 242, battery. As such, the Petitioner has not submitted new facts, supported by documentary evidence, to warrant a reopening of our previous decision.

In support of the motion to reconsider, the Petitioner does not cite a specific error in law or policy in our previous decision, nor does she cite pertinent precedent or adopted decisions, and instead argues that our analysis itself was in error and disagrees with our conclusion. While the Petitioner submitted copies of legal opinion articles, citing to an authority that is not relevant to the issues raised on motion will not meet the eligibility requirements of a motion to reconsider. Therefore, the Petitioner has not established that our prior decision was based on an incorrect application of law or USCIS policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.