



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

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

In Re: 21964025

Date: MAY 10, 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 that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. We dismissed the Petitioner’s subsequent appeal. She now files a motion to reopen and to reconsider. Upon review, we will dismiss the motion.

I. LAW

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.

Physical or mental abuse means “injury or harm to the victim’s physical person, or harm to or impairment of the emotional and psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). The implementing regulations provide the following guidance as to whether physical or mental abuse is considered “substantial:”

Whether abuse is substantial 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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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).

II. ANALYSIS

The Petitioner, a citizen of Mexico, filed her U petition in November 2015. According to the Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), in 2014, the Petitioner was walking on the street when a bicyclist grabbed the Petitioner's purse and groped her breast before riding on. The Supplement B indicated that the Petitioner was a victim of felonious assault. In support of her claim that she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, the Petitioner included a statement describing how the assault "left [her] feeling stress and fear." She stated she "had nightmares regarding the incident," sometimes would feel as if the man was following her, and feels anxiety walking alone in the streets. She also described receiving therapy which she claimed "helped [her] overcome [her] fears[,] . . . feel relaxed[,] . . . release[d] [her] anxiety of being alone in the street[,] . . . sleep better[,] and . . . continue with [her] daily activities normally." In response to the Director's request for evidence (RFE), the Petitioner provided another statement describing the assault as having caused anxiety, depression, unexpected crying, and fear of going on the street, especially when she had her daughter with her. She also included a letter from a clinical supervisor at the organization she received treatment. The author stated the Petitioner received therapy from July 2014 to July 2015 to reduce her symptoms, which included "flashbacks, nightmares, depression, anxiety and paranoia." The Petitioner also included letters authored by friends who described her insecurity and fear to go outside alone, especially with her daughter, and stated the Petitioner appeared depressed, anxious, and sad.

On appeal, the Petitioner included another statement describing that she was sexually attacked at the age of 11 or 12 years by an uncle. She stated for the first time on appeal that the assault by the stranger brought back the memories of her sexual attack. She further stated that after a year of therapy, her therapist told her she was doing better and could stop sessions. She stated she was not "cured" because some part of the fear and trauma will always be with her. She included another letter from the clinical supervisor of the organization she received treatment. The author added that the Petitioner also suffered from sleep problems, relationship issues, anger, and hypervigilance. The author stated the Petitioner was able to reduce symptoms but her symptoms were "easily triggered" by events in her life. The Petitioner also submitted letters by her employer and friends on appeal. In the letters her friends described the Petitioner's trauma as being "big," that she was "spiritually ill," emotionally very unsteady, and had a hard time forgiving what happened to her. The letters also described the Petitioner as having a good therapist who "cured her gradually," as recovering with "positive spirit," as "manag[ing] to overcome that horrible episode in her life," and as "retak[ing] her life back to a more stable normal way of being." The Petitioner asserted that the Director incorrectly applied the standard

for “substantial mental or physical abuse” and failed to give adequate weight to the clinical director’s letter, and to the cumulative harm the Petitioner suffered due to her sexual abuse as a child.

In our decision dismissing the Petitioner’s appeal, incorporated herein by reference, we noted the crime report and initial Supplement B indicated that the Petitioner was the victim of robbery and sexual battery and that the Petitioner did not suffer physical injuries but was traumatized by the incident. We summarized her symptoms as presented in the record and noted the Petitioner’s statements that her therapy sessions helped her and reduced her symptoms. We acknowledged the Petitioner’s statement on appeal describing her victimization as a child and the additional letters submitted in support, including one by the clinical supervisor. We explained that the evidence lacked sufficient probative detail to establish she suffered substantial physical or mental abuse, such as lasting effects or injuries, impairment to her ability to function, or permanent or serious long-term consequences, as a result of the incident that gave rise to her U petition. We added further that the evidence did not describe how the Petitioner’s symptoms as a result of the same impact her day-to-day life. We explained that weighing the evidence as a whole, the Petitioner had not established by a preponderance of the evidence that she suffered substantial physical or mental abuse stemming from the [] 2014 incident.

On motion, the Petitioner does not raise new facts, but submits a brief from counsel, asserting that our analysis incorrectly applied the standard to meet substantial physical or mental abuse. In support, she includes an unpublished federal district court case, where the court decided that the plaintiffs, whose employer improperly withheld their wages, made a prima facie showing that the court should certify their supplement B. The court relied on Black’s Law Dictionary and defined prima facie as, “sufficient to establish a fact or raise a presumption unless disproved or rebutted” and “at first sight; on first appearance but subject to further evidence or information.” The court then held that the plaintiffs had shown enough evidence that they suffered substantial physical and mental harm based on their physical distress from lack of food, the poor living conditions they had to endure, and their feelings of shame and sadness at being unable to buy food and having to find food in trashcans. The Petitioner argues that she has suffered more than the shame and sadness the plaintiffs suffered and has therefore met her burden of establishing substantial physical or mental abuse. As a preliminary matter, the district court case cited to by the Petitioner is binding only on the parties before it, and is not binding in this case. Moreover, the Petitioner’s circumstances vary greatly from the plaintiffs in the submitted case. The Petitioner does not allege, for example, that her assertions of substantial physical or mental abuse stem from indentured servitude or being malnourished and forced to live in substandard conditions. Rather, her claims surround the trauma associated with battery and being robbed. Moreover, a prima facie showing to obtain certification of a supplement B, required initial evidence for U nonimmigrant status, see section 214(p)(1) of the Act (requiring Supplement B as initial evidence); 8 C.F.R. § 214.14(c)(2)(i) (same), is a different and unrelated burden of proof than establishing by a preponderance of the evidence that the petitioner is eligible for that status. See *Matter of Chawathe*, 25 I&N Dec. at 376 (defining preponderance of the evidence standard to require the evidence demonstrate that the petitioner’s claim is probably true after each piece of evidence is assessed by the Director for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence) (internal citations and quotations omitted); see also 8 C.F.R. § 214.14(c)(1) (stating that USCIS has sole jurisdiction over all petitions for U nonimmigrant status), (c)(4) (providing that USCIS will determine, in its sole discretion, the evidentiary value of evidence submitted). Our analysis on appeal correctly required the Petitioner to establish her substantial physical or mental abuse claim by a preponderance of the evidence, and the district court case

submitted on motion does not establish that our decision was based on an incorrect application of law or policy.

The Petitioner also has not established that our decision was incorrect based on the evidence in the record at the time it was rendered. The Petitioner reasserts arguments already raised on appeal, such as the Director not affording the proper weight to the clinical supervisor's letter and the Director incorrectly equating substantial harm with permanent harm but does not raise error with respect to our analysis of these arguments on appeal. For this reason, we limit our review to the Petitioner's assertions that our appeal decision did not consider and give proper weight to all of the harm she has endured.¹ The Petitioner asserts that we should have weighed the emotional harm she suffered post assault, how she perceived the physical assault, as well as her ongoing harm and the cumulative harm she suffered as a result of her childhood sexual assault. The harm described in the record includes: depression, anxiety, paranoia, stress, fear, sleep problems, overprotectiveness, relationship issues, anger, crying spells, and hypervigilance. The Petitioner said her previous symptoms of sleep issues, anxiety, and flashbacks to her childhood sexual assault were exacerbated, but does not describe what her symptoms were before the battery and robbery, and how her symptoms became more severe. The record did not indicate the frequency or severity of the Petitioner's symptoms, or how they affected the Petitioner's daily routine, even at the height of their severity. The Petitioner provided some detail, such as her locking doors and windows in her home, fearing a break in, looking over her shoulder, and unexpected crying, but again, does not describe how this amounts to substantial abuse. Her friends and acquaintances noted her sadness, anxiety, and depression but did not detail, for example, how it affected the Petitioner's functioning or for how long. The Petitioner also did not provide an explanation of how she perceived the [redacted] 2014 assault.² The police report stated the Petitioner was not physically harmed and without details of her perception of the assault, we are unable to weigh this in our analysis. Furthermore, the record indicated that the incident occurred in [redacted] 2014 and that the Petitioner began treatment in July 2014 for a year, during which time she stated her symptoms lessened, she could go about her daily routines, and her therapist told her she no longer needed visits. While the clinical supervisor stated in her second letter that the Petitioner's symptoms were easily triggered by events in her life, she did not describe what those triggers are, nor did she provide sufficient detail on how these triggers affect the Petitioner. We acknowledge the Petitioner's statement that some part of her fear and trauma will always be with her. However, the Petitioner has not established we erred in our analysis weighing, for example, the nature of her injury, severity of the

¹ On motion, the Petitioner asserts that "the regulations account for cumulative trauma," by including "aggravation of pre-existing conditions" as a factor in determining substantial abuse. In support of this statement, the Petitioner cites to two articles which discuss cumulative and developmental trauma. However, the appeal decision considered the Petitioner's prior sexual assault in analyzing substantial physical or mental abuse. On motion, the Petitioner does not assert that we erred in our analysis of this assertion and an explanation was not provided for why the two articles were submitted on motion. The Petitioner does not quote from or cite to any specific part of the articles. To the extent the Petitioner asserts the articles contain information relevant to our analysis of the harm she has endured, she does not indicate what, if any, information we should have considered or erred in not considering. As discussed above, it is the Petitioner's burden to establish her claim by the preponderance of the evidence. Here, by submitting articles with little context or explanation, the Petitioner has not met her burden and the articles, in and of themselves, do not support that we erred in our analysis of substantial physical or mental abuse at the time of our prior decision.

² The Petitioner's counsel includes in the motion brief that the Petitioner noticed during the [redacted] 2014 incident that the suspect's hands were dirty but does not clearly explain the relevance of this detail. Moreover, this information was not contained elsewhere in the record. Assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

perpetrator's conduct, harm the Petitioner suffered, the duration of her harm, the extent that she has established the permanence or the seriousness of her harm, or specifically how the incident affected her mental soundness and aggravated pre-existing symptoms.

On motion, the Petitioner has not presented new facts establishing she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, as required under 8 C.F.R. § 103.5(a)(2). Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.