



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

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

In Re: 22022502

Date: MAY 17, 2022

Appeal of Nebraska 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 Nebraska 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 being the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting that he suffered substantial physical or mental abuse and has established his eligibility for the benefit sought. 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 establish eligibility for U-1 nonimmigrant classification, a petitioner must show that they, *inter alia*, have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act; 8 C.F.R. § 214.14(b)(1). The burden of proof is on the 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). 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 such evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner, a native of Honduras, left a club with friends and family members on a night in [REDACTED] 2007. When they departed the club, they were followed by individuals in a white truck. After determining that it appeared they were being followed, the Petitioner's vehicle stopped at a market to call 9-1-1. After stopping, several individuals exited the truck and began to attack the Petitioner and those in his party with baseball bats, beer bottles, and their fists. The Petitioner himself reports that he was hit in the head with a beer bottle, which caused a cut to his forehead, then was cut

on his shoulder with the resulting broken bottle. The Petitioner further reported that he was punched and kicked after he fell to the ground. The associated police report states that the Petitioner “sustained a small laceration to the top of his head, in the middle of his forehead, several small cuts to his right shoulder area, and there were other minor scratches and bruises.” The report states that the Petitioner was assisted by paramedics and transported to a hospital for treatment of his injuries. With his U nonimmigrant petition, the Petitioner submitted the medical records for his treatment of the resulting injuries, from his hospital visit immediately following the assault. In his personal statement included with his petition, the Petitioner stated that the day “was one of the most traumatic events” in his life, and that, “ever since that day, [he has] had trouble trusting people.” The Petitioner continued that he is afraid to leave his house and tries to leave as little as possible, out of fear that he will see the perpetrators, or he may be attacked by someone else. He also submitted several letters in support, from family and friends, of the changes in his behavior following the incident. The Director issued a Request for Evidence (RFE) for additional documentation of any substantial mental or physical abuse suffered by the Petitioner as a result of the assault, in April 2021. In response to the RFE, the Petitioner submitted a new Supplement B, a psychological evaluation completed over the course of three visits in July 2021, and additional letters from those who know him. As a result, the Director found the Petitioner’s evidence insufficient, and denied his U nonimmigrant Petition.

In his brief submitted on appeal, the Petitioner disputes the Director’s denial, specifically the assessment of the Petitioner’s psychological evaluation. The Petitioner states that the Director “dismissed the psychological report solely because it was prepared after additional evidence was requested.” However, we do not agree with the Petitioner. The Director assessed the evaluation and stated, “[i]t is noted that USCIS request [*sic*] evidence from [the Petitioner] on April 29, 2021, and [he] received a psychological evaluation in July 2021. On its face, it appears as though the request for evidence was the nexus for accessing treatment and not ongoing mental harm. The evaluation states that [the Petitioner] require[s] in-depth treatment for [his] disorder but fails to establish a care or treatment plan.” The Director further noted that the Petitioner had worked for the same employer since 2010, was married in 2014, and submitted documentation of his attendance of his children’s medical appointments. The Director stated that the Petitioner had not shown continued treatment for pains related to the assault, and that he had not “submitted evidence to show that [his] activities of daily living have been impacted by [his] mental state nor [has he] submitted evidence of expected or continued treatment beyond [his] initial psychological evaluation in July 2021.” In our review of the record below, we agree with the Director.

In the record below, the Petitioner submitted multiple letters from friends and family who expressed that since the incident in 2007, he no longer expresses interest in going out at night and only leaves the house to go to work or drop his child off at school. In the Petitioner’s own statement mentioned above, he stated, “[e]ver since that day, [he has] had trouble trusting people. [He is] constantly looking over [his] shoulder and afraid that someone is going to attack [him] or [his] family. [He has] since developed sleep apnea, and [he is] certain that it was caused by the traumatizing event of that day. [He] limits most of [his] outings for work or to run quick errands. [He is] afraid that [he] will run into one of the perpetrators or worse, that someone could attack [him] or [his] family.”

The Petitioner states that the Director disregarded the letters and statements provided by the Petitioner’s family and friends. While the Director did not provide a detailed analysis of the letters, they all reflect that the Petitioner’s attitude has changed specifically toward going out at night, and

that he only leaves the house for work or errands. They do not provide insight into the frequency with which the Petitioner went out at night prior to the assault, provide specific details regarding the Petitioner's work schedules, or implicate that the Petitioner's daily life has changed as a result of the assault. In other letters provided with his petition attesting to his character, people familiar with the Petitioner reflected that he, "attended all monthly parent meetings and was readily available to pick up his son," as well as attended medical appointments for his son.

Further, the Petitioner states that the Director disregarded his diagnosis for Post-Traumatic Stress Disorder. We acknowledge that the diagnosis was not discussed in the Director's decision. However, 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). While we do not seek to diminish the harm suffered by the Petitioner, the incident was a single occurrence of short duration that required only minimal emergency room care and did not result in any lasting physical effects.

Additionally, in the brief submitted on appeal, the Petitioner states that he indicated in his psychological evaluation that he did not seek further mental health care due to cultural stigma but does not provide substantive statements regarding how he managed his mental health in the years between the assault and his evaluation. The Petitioner has not addressed this claim in his personal statements. Further, in the letter written by the Petitioner's spouse, she stated, "[h]e still has left shoulder pain whenever he lifts heavy things which affects him a lot at work. [She feels] that if [her] husband is at least able to receive a work permit in this country he will be able to make more money so he can seek the medical and psychological treatment he needs." This contradicts the statement included in the evaluation that the Petitioner had not sought treatment due to stigma. He also does not explain why he has not provided any treatment or care records for any substantial physical abuse he suffered, as he did not make similar claims for not seeking treatment for any physical injuries. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 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 evidence for us to consider, we determine, in our sole discretion, the credibility of and weight given to it. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). 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. We agree.

III. CONCLUSION

The Petitioner was the unfortunate victim of the qualifying crime of felonious assault. While we acknowledge the impact of that crime upon the Petitioner, the record does not show that the Petitioner suffered substantial physical or mental abuse as a result of the assault. Accordingly, the Petitioner is not eligible for U classification.

ORDER: The appeal is dismissed.