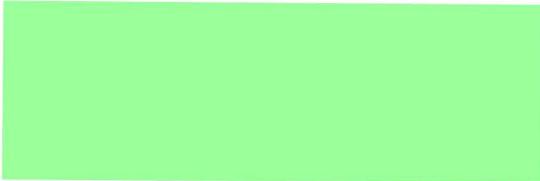


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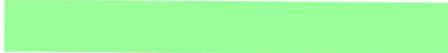


U.S. Citizenship
and Immigration
Services

Date: **JAN 15 2014** Office: VERMONT SERVICE CENTER

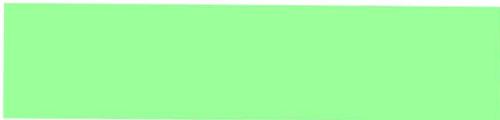


IN RE: Petitioner:



PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U).

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition finding that the petitioner failed to establish that she was the victim of qualifying criminal activity, that she suffered substantial physical or mental abuse as a result of her victimization, or that she possesses information about and was helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a letter from a [REDACTED] Assistant State Attorney.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . manslaughter; murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification at 8 C.F.R. section 214.14(a) provide for certain definitions, and state, in pertinent part:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

* * *

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility*. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. . . ;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent

and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Honduras who last entered the United States on or about November 20, 2001, without inspection, admission or parole. On January 23, 2010 the petitioner's adult brother was murdered in Florida. On September 6, 2011, the petitioner filed the instant Form I-918 U petition. On April 2, 2012, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On January 9, 2013, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of her brother's murder, a qualifying crime. When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] (certifying official). At Part 3.1, the certifying official identified the crime as murder and manslaughter and listed the statutory citation for the crime at Part 3.3 as Florida Statutes § 782.04(2) (second degree murder). At Part 3.5, the certifying official described the involvement of the petitioner in the criminal activity being investigated or prosecuted as being the sister of the deceased. The petitioner also submitted two personal statements in which she stated that she found out through a telephone call that her brother was killed.

While it is clear that the petitioner has been affected by her brother's death, she does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). In cases where the direct victim was murdered, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried siblings of victims under 21 years of age. 8 C.F.R. § 214.14(a)(14)(i). In this case, the petitioner's brother was over the age of 21 years and the petitioner was over 18 years old and married at the time of filing, so she would not qualify as an indirect victim of the criminal activity under the regulations. *See id.*

The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of murder, the evidence in the record does not demonstrate that the petitioner's murder was investigated or prosecuted, but rather that the petitioner's brother was murdered when he was 34 years old and she was 40 years old. The petitioner has, therefore, failed to show that she is the victim of the qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that she was the victim of qualifying criminal activity, she has also failed to demonstrate that she suffered substantial physical or mental abuse as a result of such victimization, as required under 8 C.F.R. § 214.14(b)(1).

Possession of Information and Helpfulness to a Certifying Agency

The petitioner has also failed to demonstrate that she possessed information about the qualifying criminal activity or that she was helpful to a certifying agency in the investigation or prosecution of the activity. At Parts 4.1 and 4.2 of the Form I-918 Supplement B, the certifying official answered "No" to the questions regarding whether the petitioner possessed information concerning the criminal activity and whether she has been, is being, or is likely to be helpful in the investigation and/or prosecution of the criminal activity. At Part 4.5, the certifying official stated that the deceased victim is the petitioner's brother.

The petitioner submitted two letters dated May 11, 2012 and October 30, 2012, in which the certifying official reiterated the details listed in the Form I-918 Supplement B and noted generally that her office encourages the family members of victims to attend and participate throughout the prosecution of the case when appropriate, and that it is beneficial to have familial support from the survivors. The certifying official also noted that she hoped the petitioner's visa could be extended until the case is resolved. On appeal, the petitioner submits a letter dated January 25, 2013, in which the certifying official repeats her earlier statements.

On appeal, counsel asserts that the evidence submitted proves that the petitioner and her family have been helpful to law enforcement and were indirect victims of the criminal activity. Counsel does not offer any legal or factual analysis to support these contentions. According to the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 Supplement B must state, in part: that the petitioner possesses information concerning the qualifying criminal activity and that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(b)(2) further requires the petitioner to demonstrate that she has knowledge of the details and specific facts concerning the qualifying criminal activity. The Form I-918 Supplement B at Parts 4.1 and 4.2 states that the petitioner did not possess information concerning the criminal activity and was not helpful to the certifying agency in its investigation or prosecution. In her letter, the certifying official does not make any reference to any information the

petitioner possesses nor did she indicate that the petitioner has been helpful to the investigation or prosecution of her brother's murder.

According to the evidence, the petitioner was not present when her brother was murdered and did not know any information or details about the crime itself. In her statements, the petitioner explained that she only learned about her brother's murder after it occurred, and she does not indicate that she possesses any information about the murder. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

Conclusion

The petitioner has failed to establish that she was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act and described in 8 C.F.R. § 214.14(a)(14). The petitioner has also failed to establish that she possessed information and was helpful to the investigation or prosecution of qualifying criminal activity, or that she suffered substantial physical or mental abuse as a result of her victimization. The petitioner is consequently ineligible for U nonimmigrant classification and her petition must remain denied.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.