



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

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

MATTER OF N-V-D-L-S-

DATE: NOV. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition and subsequent motion to reconsider. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

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

(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[.]

Domestic violence and witness tampering are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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. 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;

(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. . . .

(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. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in December 2009, without inspection, admission, or parole. The Petitioner filed the instant Form I-

(b)(6)

918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on January 7, 2013. On November 8, 2013, the Director issued a request for evidence (RFE) that the Petitioner was the victim of qualifying criminal activity and that the perpetrator used witness tampering as a means to avoid or frustrate efforts to investigate, arrest, prosecute or otherwise be brought to justice, or to further the abuse through manipulation of the legal system. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918 because the Petitioner did not establish that he was the victim of qualifying criminal activity and could therefore not meet any of the other requirements. The Petitioner filed a motion to reconsider, but the Director denied the motion on August 27, 2014. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner submits a short statement in which he asserts that the decision to deny the motion to reconsider was made in error and that he reported the witness tampering to the authorities.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

A. Certified Criminal Activity

The evidence shows that the Petitioner's father shot and murdered the Petitioner's mother. The Petitioner was not present at the time of the murder. The Petitioner's uncle later threatened the Petitioner. The Petitioner submitted a Form I-918 Supplement B that was signed by Assistant District Attorney [REDACTED] of the Tennessee District Attorney's Office, [REDACTED], (certifying official) on August 10, 2012. [REDACTED] listed the criminal activity of which the Petitioner was a victim at Part 3.1 as domestic violence, witness tampering, and attempt to commit any of the named crimes. In Part 3.3, [REDACTED] referred to Tenn. Code Ann. §§ 39-13-111 (domestic assault) and 39-16-507 (witness coercion), as the criminal activity that was investigated or prosecuted. The incident report submitted with the Form I-918 Supplement B lists the offense as murder/nonnegligent manslaughter.

B. The Petitioner is Not a Victim of Qualifying Criminal Activity

The Form I-918 Supplement B, incident report, and court documents indicate that the primary crime investigated and prosecuted was the murder of the Petitioner's mother. While it is clear that the Petitioner has been affected by his mother's death, he 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 under 21 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 mother and the Petitioner were over 21 years old at the time of filing, so he would not qualify as an indirect victim of the criminal activity under the regulations. *See id.* Furthermore, although the certifying official listed domestic assault as the crime investigated, the date listed at Part 3.2 and the narrative at Parts 3.5, 3.6 and 4.5 indicate that the

certifying official was referring to the Petitioner's mother's murder as opposed to any assault of which the Petitioner may have been the victim.¹

The Director noted that the Petitioner did not qualify as a direct victim because he had not established that he had suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. As the Petitioner's mother was the murder victim, the Petitioner was not the direct victim of the murder. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was *actually present during a crime of violence*." *Id.* at 9 (emphasis added). The evidence shows that the Petitioner was not present at the time of the murder and only learned of it later from his brother. Although the record shows that the Petitioner has been affected by the murder of his mother, there is no support for the Petitioner's claim that he was the direct victim of the criminal activity perpetrated against his mother. The Petitioner has, therefore, not shown that he is the victim of the qualifying criminal activity of domestic violence, as required by section 101(a)(15)(U)(i) of the Act.

Furthermore, to establish that he was the victim of the qualifying crime of witness tampering in these proceedings, the Petitioner must demonstrate that the perpetrator committed the offense, at least in principal part, as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice for other criminal activity; or (2) to further his abuse or exploitation of or undue control over the Petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii).

The evidence in the record does not demonstrate that the Petitioner's uncle committed witness tampering as a way to avoid or frustrate efforts by law enforcement personnel to bring him to justice for other criminal activity, or as a means to further his abuse or exploitation over the Petitioner through manipulation of the legal system. In Part 3.5 of the Form I-918 Supplement B, the certifying official indicated that the Petitioner's uncle said he would kill anyone who shared photographs or information about the murderer's whereabouts with investigators. In his affidavit, the Petitioner stated generally that his uncle threatened him because he was angry that the Petitioner had shown the police pictures of the Petitioner's father. The record lacks evidence that the Petitioner's uncle was engaged in any other criminal activity at the time, and there is no basis to conclude that any witness tampering was done to avoid or frustrate any ongoing law enforcement investigation against him, as there is no evidence the Petitioner's uncle was under any investigation. The record also does not show that the Petitioner's uncle threatened him in order to further abuse,

¹ In his affidavit, the Petitioner recalls that his father abused him as a child in Mexico, but he does not claim that he was assaulted by his father in the United States or that any such abuse was investigated or prosecuted.

exploit or exert undue control over the Petitioner through the manipulation of the legal system. The Petitioner has, therefore, not established that he is the victim of the qualifying criminal activity of witness tampering, as defined by 8 C.F.R. § 214.14(a)(14)(ii).

C. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

D. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that he possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

E. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

F. Jurisdiction

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also did not establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

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.

Cite as *Matter of N-V-D-L-S-*, ID# 14352 (AAO Nov. 2, 2015)