

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D14



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 13 2010

IN RE: Petitioner: [REDACTED]

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

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 because the petitioner did not meet the definition of a qualifying family member at 8 C.F.R. § 214.14(a)(10) and thus could not establish that he was an indirect victim of the crime of murder committed against his daughter. According to the director, the petitioner's daughter, the victim of the qualifying crime of homicide, was over the age of 21 at the time she was murdered. On appeal, counsel submits a brief and re-submits documentation already in the record.

Applicable Law

Section 101(a)(15)(U) of 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;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien.

(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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

The regulation at 8 C.F.R. § 214.14(a)(10) defines a qualifying family member as, in pertinent part:

in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, [qualifying family member] means the spouse or child(ren) of such alien.

The regulation at 8 C.F.R. § 214.14(a)(14) states, in pertinent part:

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, For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

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 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."

Facts and Procedural History

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. He is the father of T-C-¹, the victim of a homicide. T-C- was born on November 8, 1968. She was shot on October 27, 2005 and died of her injuries on November 3, 2005. On the date of the incident and her death she was 36 years old. The petitioner entered the United States on October 30, 2005 as a B-2 visitor with authorization to remain in the United States until November 12, 2005. In March 2007, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On August 14, 2007, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action.

The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on April 14, 2008, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The Form I-918 Supplement B was signed by [REDACTED], Senior Deputy District Attorney, Homicide Unit, Orange County District Attorney's Office, and dated April 11, 2008. The Form I-918 Supplement B at Part 3, Item 1 identifies the criminal activity as murder. The Form I-918 Supplement B at Part 3, Item 3 identifies the statutory citation(s) for the criminal activity being investigated or prosecuted as California Penal Code sections 187(a) - murder; 664/187(a) - attempted murder; 245(b)(2) - assault; and 12022.53(c) and (d) - discharging a firearm. The Form I-918 Supplement B at Part 3, Item 5 describes the criminal activity being investigated and/or prosecuted as the murder of T-C- by her spouse and that the petitioner as the father of the victim has, is and will continue to provide vital information in the investigation and prosecution of the victim's murderer.

At Item 6 of Part 3, the certifying agency lists the known injuries, in pertinent part, as: "an indirect victim of the murder of T-C-."

Counsel for the petitioner initially noted in an April 11, 2008 letter accompanying the petition that the U nonimmigrant regulations provide for U nonimmigrant classification to certain indirect victims of serious crimes. Counsel noted further that the Form I-918 Supplement B had been signed by [REDACTED] of the Orange County District Attorney's office, who had indicated that the petitioner's presence during the trial of the perpetrator was necessary. The record also included the petitioner's February 15, 2007 statement, wherein he declared: that his daughter had married the alleged perpetrator in Mexico; that the couple and their child had moved to the United States in 1993; that when he contacted his daughter via telephone he suspected that something was wrong in the marriage; and that on October 27, 2005 he received a phone call from the Anaheim Police Department informing him that his daughter

¹ Name withheld to protect the individual and her family's identity.

was in critical condition. The petitioner declared further: that once he and his wife were admitted into the United States they found out that their daughter had received multiple gunshot wounds; that she was eventually pronounced dead on November 3, 2005; and that they found out that her husband was the suspect who had killed her.

Upon review of the evidence in the record, the director determined that the petitioner did not qualify as the indirect victim of the qualifying crime as the victim was over the age of 21 when the murder took place.

On appeal, counsel for the petitioner asserts: that the petitioner is the direct victim of the crime of domestic violence that his deceased daughter experienced during her marriage; that the petitioner was left emotionally and psychologically traumatized after losing his daughter; and that as a result of what he knew about what had happened, his testimony was essential to the trial and conviction of his daughter's spouse. Counsel also contends that the petitioner should be considered a bystander to the domestic violence and murder of his daughter.

Upon review of the Form I-918 Supplement B, the AAO finds that the certifying agency indicated that the qualifying crime is murder. The direct victim of the crime, the petitioner's daughter is deceased. The certifying agency has not indicated that the petitioner is the victim of the qualifying crime of "domestic violence." Rather the only qualifying crimes listed on the Form I-918 Supplement B are crimes relating to the murder, attempted murder, assault, and discharge of a weapon resulting in the petitioner's daughter's death.

As referenced above, the petitioner, as a parent, may only be considered an indirect victim of his daughter's murder if his daughter was under the age of 21 when the qualifying crime occurred. Section 101(a)(15)(U)(ii)(II) of the Act; 8 C.F.R. § 214.14(a)(14)(i). There is no statutory basis for the petitioner to qualify as an indirect victim. The AAO acknowledges counsel's contention that the petitioner in this matter should be considered a bystander of the domestic abuse and murder of his daughter. However, the petitioner has not established that he was a bystander as he was not present at the time and did not witness the domestic abuse and murder of his daughter. Although he has clearly suffered the emotional and psychological effects of the abuse and murder of his adult daughter, the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14)(i) does not encompass an adult victim's family members who suffer indirect harm. Accordingly, the petitioner is not eligible for U nonimmigrant status as a victim because his daughter was over the age of 21 at the time of her murder.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met as the petitioner has not established that he is statutorily eligible as an indirect victim of a qualifying crime and he is not statutorily eligible as a victim as set out in the statute and regulations. Accordingly, the appeal will be dismissed.



Page 6

ORDER: The appeal is dismissed.