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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D14

DATE: JUN 14 2011

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

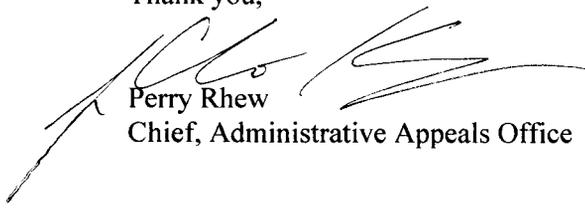
[REDACTED]

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, with a fee of \$630. 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 petition will remain denied.

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

The director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime or criminal activity from which he suffered any resultant substantial physical or mental abuse. On appeal, counsel submits a brief.

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;

(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[.]

The regulations governing the U nonimmigrant classification 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, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

* * *

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; *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 Mexico who entered the United States without inspection. The petitioner filed the instant Form I-918 U petition on August 24, 2009. On February 17, 2010, the director issued a request for evidence (RFE) to obtain, in part, evidence relating to the petitioner's victimization and resultant substantial physical or mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and 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 a qualifying crime or criminal activity.

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B, signed by [REDACTED] Martin County Florida Sheriff's Office. At Part 3.1 Detective Smith identified the crime as sexual assault and listed the statutory citation for the crime at Part 3.3 as sexual battery under 12 years old. The petitioner also submitted a redacted one-page Child Abuse

Incident Report, dated August 12, 2007, from the Martin County Sheriff's Office. The Sheriff's report listed the petitioner as the complainant and his nephew as the victim. Neither the Form I-918 Supplement B nor the redacted Child Abuse Incident Report contained any narrative concerning the crime or criminal activity that had taken place.

In the petitioner's July 8, 2009 affidavit, he stated that he was taking care of his 6-year-old nephew for the weekend and took his nephew to his uncle's house so that his uncle could cut his nephew's hair. The petitioner recounted that while his nephew and uncle were in the bathroom, he was speaking with his cousin in the living room, when his uncle and nephew emerged from the bathroom, both with wet hair. The petitioner stated that when it was time for him and his nephew to leave, he noticed that his nephew was quiet and unresponsive to his questions. According to the petitioner, he and his girlfriend took his nephew home and his nephew later disclosed to him that the uncle had sodomized him. The petitioner asserted that he called the police, went to his uncle's house so that he could identify his uncle to the police, and took his nephew to the hospital. The petitioner stated that he was called to testify and was told that he would be contacted if more testimony was needed; however, he was never again contacted. The petitioner stated that he is haunted by what happened to his nephew because he was responsible for nephew at the time of the assault. He also stated that he was afraid that his uncle's family would hurt him because they did not believe that his uncle would have committed such a crime.

In his denial letter, the director cited the regulatory definition of indirect victim at 8 C.F.R. § 214.14(a)(14)(i), and stated that the petitioner did not meet the definition because he was the uncle of the victim. The director determined further that the petitioner did not suffer direct and proximate harm based upon his nephew's sexual assault.

On appeal, counsel states that the petitioner was directly and proximately harmed by his nephew's sexual assault because he "virtually" witnessed the crime perpetrated against his nephew, much like a bystander to a crime may suffer harm from witnessing its commission. Counsel argues that U.S. Citizenship and Immigration Services (USCIS) should adopt a more expansive definition of indirect victim to conform to the intent of Congress in enacting legislation for alien victims of certain criminal activity, and cites section 1513(a)(2)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. Law No. 106-386 (Oct. 28, 2000), which provides:

The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

There is no specific language in section 1513(a)(2)(A) of the VTVPA to suggest that USCIS defined the term "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14) against Congressional

intent. Section 1513(a)(2)(A) of the VTVPA, while stating that the legislation's purpose is to protect alien victims of crimes by encouraging them to report their victimization to law enforcement authorities, does not indicate that the term "victim" should be defined broadly to include extended family members who themselves have not been victimized.

Counsel also asserts that the petitioner qualifies as an indirect victim under the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) because he is a family member and the victim, as a minor, was incompetent. USCIS does not rely on the AG Guidelines when determining whether an individual is an indirect victim, as the regulation at 8 C.F.R. § 214.14(a)(14)(i) provides a specific definition of the term.¹ As an uncle, the petitioner cannot qualify as an indirect victim based solely on his familial relationship to the victim, because only a parent or unmarried sibling under the age of 18 may qualify when the victim is incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i).

While there may be circumstances where a bystander to a qualifying crime may suffer "unusually direct injuries" as a result of witnessing a violent crime, the petitioner in this case was not present at the time of the sexual assault and learned of it only a few hours later when his nephew disclosed it to him. The Form I-918 Supplement B also does not support the petitioner's claim of witnessing the sexual assault, as it identifies the petitioner as the victim of sexual battery of a child under the age of 12, not his nephew. [REDACTED], who signed the certification, does not provide any probative details about the crime or the petitioner's role in the crime and its subsequent investigation, such as whether the petitioner was the actual victim, a witness to the crime, or a complainant. For example, [REDACTED] does not describe the criminal activity or any known or documented injury to the petitioner at Parts 3.5 and 3.6, and he does not provide any information regarding the petitioner's helpfulness at Part 4.5. [REDACTED] also does not attach any Sheriff's reports, court records or other investigative information relating to the crime that he certified on the Form I-918 Supplement B. Although the record shows that the petitioner has been greatly affected by the sexual assault against his nephew, there is no support for counsel's claim that the petitioner was directly or proximately harmed as a bystander to the criminal activity perpetrated against his nephew. See Preamble to the Interim Rule, 72 Fed. Reg. 53016-17. The petitioner is, therefore, not the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Conclusion

Although the petitioner was greatly affected by the sexual assault of his nephew, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered any resultant substantial physical or mental abuse as required under subsection 101(a)(15)(U)(i)(I) of the Act. The petitioner is consequently ineligible for nonimmigrant

¹ In its Preamble to the Interim Rule (72 Fed. Reg. 53014, 53017), USCIS acknowledged the AG Guidelines only as a resource in developing the term "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14).

classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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