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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

PUBLIC COPY

D14

DATE: JUL 21 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:

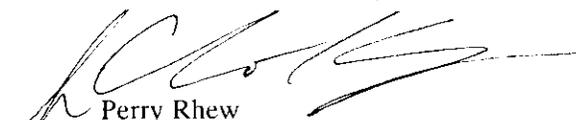
[REDACTED]

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 and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submits a brief and additional evidence.

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:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

* * *

(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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. In January 2004, the petitioner's brother-in-law was convicted of aggravated sexual assault against the petitioner's younger sister. The crime occurred on December 1, 2001 when the petitioner's younger sister was eight years old and the petitioner was 12 years old. In July 2004, the petitioner's mother filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On December 22, 2004, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action as the derivative beneficiary of his mother's case. The petitioner's mother passed away in July 2006. The petitioner's deferred action was twice extended, but expired on February 7, 2008.¹ In December 2008, the petitioner was placed into removal proceedings before the El Paso Immigration Court.² The petitioner filed the instant Form I-918 U petition on May 26, 2009. On November 23, 2009, the director issued a request for evidence (RFE) to obtain, in part, evidence

¹ According to counsel, the petitioner's foster parents did not request renewal of the petitioner's deferred action.

² The petitioner's next hearing date is scheduled for June 5, 2012.

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.

The Petitioner is Not a Victim of His Sister's Sexual Assault

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of the qualifying crime committed against his younger sister.

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] District Attorney, [REDACTED] Judicial District Attorney's Office. At Part 3.5, [REDACTED] indicated that the petitioner's sister was the victim of aggravated sexual assault to a child, noting that the petitioner was living in the same home as his sister at the time the criminal activity occurred. [REDACTED] noted further that the petitioner's mother brought the petitioner and his sister to pretrial hearings as requested.³ At Part 3.5, which asks the certifying official to provide any known or documented injuries, [REDACTED] referred to accompanying documents from the El Paso Police Department. The accompanying police reports recount the El Paso Police Department's investigation into the sexual assault of the petitioner's sister by their older sister's husband. The reports do not mention the petitioner by name, or establish that he was interviewed during the course of the investigation. On appeal, the petitioner submits a letter, dated January 29, 2010, from [REDACTED], who states that the petitioner was important to the criminal complaint and its disposition against the petitioner's brother-in-law. [REDACTED] asserts that because the petitioner's brother-in-law was removed to Mexico based on his criminal convictions, the petitioner should remain in the United States for his safety.

In his denial letter, the director acknowledged that a qualifying crime had occurred, but determined that the petitioner was neither a direct nor indirect victim of such crime. On appeal, counsel states that the petitioner was the direct victim of his sister's sexual assault because he was a bystander who suffered unusually direct injury as a result of the crime. Counsel maintains that the petitioner's injury was his placement in a shelter and foster care, as well as the mental abuse he suffered from the after-effects of his sister's sexual assault. Counsel claims that in the alternative, the petitioner is an indirect victim of the criminal activity because he and his younger sister were both minors when the criminal activity occurred and were therefore incapacitated.

The evidence submitted below and on appeal does not support counsel's claim that the petitioner is a victim of the crime committed against his sister. The record does not show that the petitioner witnessed or was otherwise aware of the assault until after it occurred. Although [REDACTED] stated on the Form I-918 Supplement B that the petitioner was living in the same home as his sister during

³ [REDACTED] also completed a "U Visa Certification Form" in February 2004, which the petitioner's mother submitted in support of her request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification.

the period of time when the criminal activity occurred, the accompanying police reports do not mention that the petitioner was either present at or in the vicinity of the sexual assaults on his sister. In his personal declaration, the petitioner explained that he was unaware of what happened until the day his mother confronted his brother-in-law. Thus, 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 sister. Consequently, the petitioner has not demonstrated that he was a direct victim of the crime perpetrated against his sister.

The record also does not support counsel's claim that the petitioner is an indirect victim due to his or his younger sister's incapacity as minors. The regulation at 8 C.F.R. § 214.14(a)(14)(i) specifies that a direct victim is incapacitated when he or she is "unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity." The record indicates that the petitioner's younger sister was eight years old at the time and would have been unable to assist in the investigation and prosecution without their mother's assistance. The record contains summons issued to the petitioner's mother and younger sister to testify as witnesses in the criminal proceedings as well as letters from a forensic examiner, the Texas District Attorney's Victim Assistance Program and the Office of the Texas Attorney General Crime Victims' Compensation Division. All of these documents indicate that the petitioner's mother and sister assisted law enforcement and were recognized as victims of the crime. None of these documents mention the petitioner. Accordingly, the record does not establish that the petitioner was the indirect victim of the assault against his younger sister due to her alleged incapacity at the time of the offense. At the time the crime was committed, the petitioner was 12 years old, but counsel fails to articulate how the petitioner is a victim of the crime perpetrated against his younger sister due to his own incapacity as a minor. Accordingly, the record does not establish that the petitioner was the indirect victim of the crime perpetrated against his sister.

The petitioner also does not meet the definition of a victim because the relevant evidence does not demonstrate that he suffered direct or proximate harm as a result of the sexual assault committed against his sister. The petitioner's personal declaration, the letters from his high school counselors and the psychological evaluation and supplemental statement of [REDACTED], (a licensed counselor and social worker) show that the petitioner has endured depression and numerous challenges. However, the record indicates that the crime committed against the petitioner's younger sister was just one of many factors affecting his mental health, which included his family's economic instability, his mother's illness and eventual death and his placement in a children's shelter and foster care. Although the evidence shows that the petitioner has been greatly affected by the crime against his sister, the record does not establish that he suffered direct or proximate harm as a result of that crime. Accordingly, he does not meet the regulatory definition of a victim for this additional reason.

Conclusion

Although the petitioner was greatly affected by the sexual assault of his younger sister and was helpful to the district attorney in the prosecution of the perpetrator, the petitioner does not meet the definition

of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14). The petitioner also did not establish that he suffered substantial physical or mental abuse as the result of being the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. The petitioner is consequently ineligible for nonimmigrant 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.