

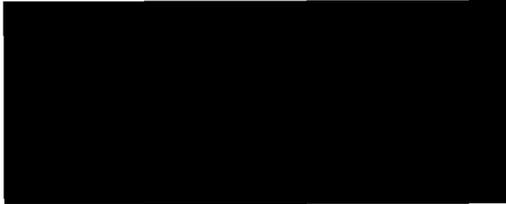
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**PUBLIC COPY**

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 03 2011**

Office: VERMONT SERVICE CENTER

FILE:



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 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 Petition for U Nonimmigrant Status (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 remains 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 on the basis that the petitioner had failed to establish that he was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. On appeal, counsel submits a Notice of Appeal (Form I-290B) and a brief, reasserting the petitioner's eligibility.

*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: 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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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).

#### *Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Mexico. In September 1990, the petitioner entered the United States without inspection. On September 28, 2009, [REDACTED] filed an Immigrant Petition for Alien Worker (Form I-140) on behalf of the petitioner which was approved on December 22, 2009.

On April 15, 2009, the petitioner filed the instant Form I-918 U petition. On September 9, 2009, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On March 9, 2010, the director issued a second RFE. On October 18, 2010, after considering the evidence of record, including counsel's responses to the RFEs, 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.

On appeal, counsel asserts that the petitioner is eligible as the direct victim of a qualifying crime who suffered substantial harm as a result of that crime.

#### *The Petitioner is Not a Victim of Qualifying Criminal Activity*

The most recently executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Deputy District Attorney [REDACTED] (certifying official) of the Sonoma County District Attorney's Office. At Part 3.1, the certifying official indicated that the

petitioner was the victim of criminal activity involving, or similar to manslaughter. At Part 3.3, the certifying official cited section 192(b) of the California Penal Code (CPC) as the criminal activity. Section 192 of the CPC provides, in pertinent part:

Manslaughter is the unlawful killing of a human being without malice . . .

....

(b)Involuntary--in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

(Westlaw 2011)

At Parts 3.5 and 3.6, the certifying official described the criminal activity being investigated or prosecuted as “J-E-B-<sup>1</sup>, son of (the petitioner) was found with a gunshot wound to the head on February 6, 2008,” and the known or documented injury to the petitioner to be a penetrating gunshot wound to the head of J-E-B- (deceased). Part 4.5 referred to attached documents. A letter, dated November 23, 2009, signed by the certifying official indicated that the petitioner’s son was killed as a result of a single gunshot wound to the head as the result of the criminally negligent handling of a firearm by P-S-R-<sup>2</sup> which resulted in the firearm being discharged in the direction of the petitioner’s adult son. The certifying official indicated that the petitioner cooperated with law enforcement and the District Attorney’s Office in the prosecution of the case and that the petitioner played an important part in obtaining a conviction and prison commitment in the case.

Counsel contends that the petitioner is a victim of qualifying criminal activity, even though he was not present at the time of the shooting of his son, and he had information which he readily provided to law enforcement. Counsel contends that the regulation does not mandate that a person be present during the crime to qualify as a direct victim of the criminal activity and the insertion of the word “generally” into the definition gives U.S. Citizenship and Immigration Services (USCIS) leeway to adjudicate the facts of each situation on a case-by-case basis to determine eligibility. Counsel contends that the petitioner should be considered a direct victim because he had invaluable information for law enforcement and has suffered immensely at the death of this son as shown by a psychological report.

The regulation at 8 C.F.R. § 214.14(a)(14) defines “victim of qualifying criminal activity” as an alien who is directly and proximately harmed by the qualifying criminal activity. The Form I-918 Supplement B and the letter from the certifying official indicate that the petitioner’s adult son was the direct victim of the qualifying criminal activity, and that the petitioner was helpful in the investigation and prosecution of his son’s killer.

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<sup>1</sup> Name withheld to protect the individual’s identity.

<sup>2</sup> Name withheld to protect the individual’s identity.

As a parent, the petitioner may only be considered an indirect victim of his son's murder or manslaughter if his son was under the age of 21 when the qualifying crime occurred. 8 C.F.R. § 214.14(a)(14)(i). There is no statutory or regulatory basis for the petitioner to qualify as an indirect victim, as his son was 30 years old at the time of his death.

On appeal, counsel claims that the petitioner in this matter should be considered a principal victim because he suffered direct and proximate emotional and psychological harm due to his son's death, as well as the loss of his home due to the lack of financial assistance from his deceased son. Although the petitioner has clearly suffered the emotional, psychological and financial effects of the manslaughter of his adult son, the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14) does not encompass an adult victim's family members who suffer indirect harm. *See* Preamble to the Interim Rule, 72 Fed. Reg. 53014, 53017. By creating a specific "indirect victim" definition for family members of murder and manslaughter victims at 8 C.F.R. § 214.14(a)(14)(i), the regulation clearly indicates that such family members cannot ordinarily qualify as direct victims of their family member's homicide. 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 his son's manslaughter and did not suffer unusually direct injuries as a result of witnessing his son's death. *See id.* at 53016-17.

The petitioner has failed to establish that he is a victim of the qualifying crime perpetrated against his son, as that term is defined at 8 C.F.R. § 214.14(a)(14). He is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

#### *Conclusion*

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.