

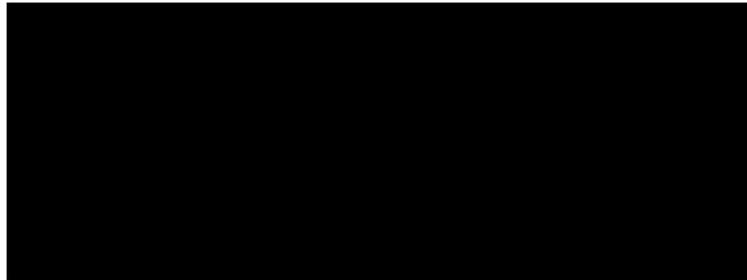
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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Date: Office: VERMONT SERVICE CENTER

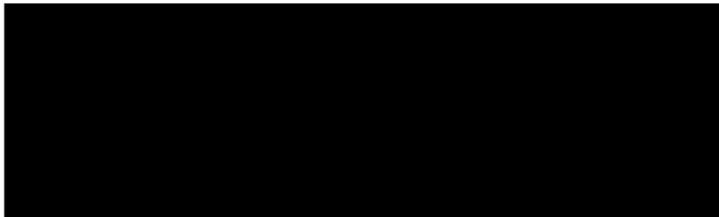
FILE: 

OCT 18 2011

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:

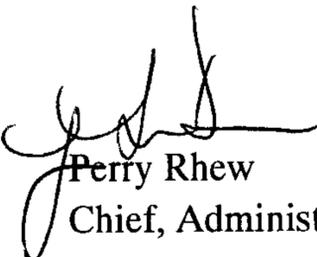


INSTRUCTIONS:

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 will remain 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 she suffered substantial physical or mental abuse as the result of being a victim of qualifying criminal activity. 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 [REDACTED]. The petitioner entered the United States without inspection in November 2006. On February 18, 2010, the petitioner filed the instant Form I-918 U petition. On August 19, 2010, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On February 9, 2011, after considering the evidence of record, including counsel's response to the RFE, 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.

Analysis

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by District Attorney Dan May (certifying official) of the 4th Judicial District Attorney's Office in Colorado Springs, Colorado. At Part 3.1, the certifying official indicated that the petitioner was the victim of criminal activity involving, or similar to murder. At Part 3.3, the certifying official cited section 18-3-102(a)(1) of the Colorado Statutes (CS) as the criminal activity. Section 18-3-102(a)(1) of the CS provides, in pertinent part:

(1) A person commits the crime of murder in the first degree if:

(a) After deliberation and with the intent to cause the death of a person other than himself, he causes the death of that person or of another person

(Westlaw 2011)

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as “a double homicide that occurred on June 6, 2008 in El Paso County. The victims, C_R_¹ and A_C_² were both shot and killed in a drive by shooting while posting yard sale signs.” At Part 3.6 the certifying official described the known or documented injury to the petitioner as “the psychological and emotional pain caused by the senseless murder of her brother C_R_. At the time of the crime [the petitioner] was pregnant with her daughter. A few days after the crime she had to be admitted to the hospital with pregnancy complications.” At Parts 4.1 and 4.5 the certifying official indicated that the petitioner had been helpful in the prosecution of the case and that the petitioner provided information to law enforcement investigators and helped in the identification of her brother’s body.

Counsel contends that two defendants were charged and convicted in the murder of the petitioner’s brother and that the petitioner provided testimony to the District Attorney’s Office and assisted prosecutors as necessary to secure a conviction and appropriate sentencing. Counsel contends that the petitioner has suffered substantial mental abuse as the result of her brother’s murder at such a young age and that the loss has significantly affected the petitioner’s mental health. Counsel contends that the petitioner was pregnant at the time of the crime and that, upon learning of her brother’s murder the petitioner went into premature labor.

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 police reports indicate that the petitioner’s adult brother was the direct victim of the qualifying criminal activity, and that the petitioner was helpful in the investigation and prosecution of her brother’s killers.

As a sibling the petitioner may only be considered an indirect victim of her brother’s murder or manslaughter if her brother was under the age of 21 when the qualifying crime occurred and she is unmarried and under the age of 18. 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 her brother was 21 years old at the time of his death and she was also over the age of 18.³

On appeal, counsel claims that the petitioner in this matter should be considered a victim because she suffered physical, emotional and psychological harm due to her brother’s death. Although

¹ Name withheld to protect the individual’s identity.

² Name withheld to protect the individual’s identity.

³ The Death Certificate for the petitioner’s brother indicates that he was born on September 19, 1986 and his death occurred on June 6, 2008.

the petitioner has clearly suffered the physical, emotional and psychological effects of the murder of her adult brother, 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. 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.

We acknowledge that circumstances may exist where a bystander to a qualifying crime may suffer “unusually direct injuries” as a result of witnessing a violent crime. Although the petitioner states that she went into premature labor due to the emotional impact that her brother’s death had on her, she submitted no evidence of any medical complications of her pregnancy. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record further shows that she was not a bystander to the crime.

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

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving her 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.