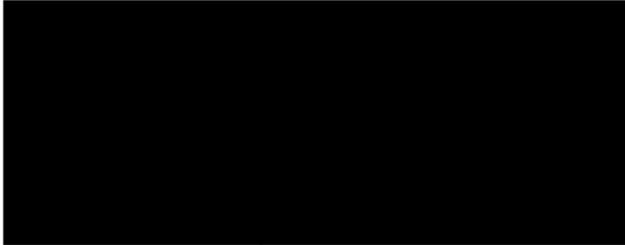


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



814

Date: **JUL 13 2012** 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (“the director”), 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)(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 on the basis that the petitioner had failed to establish that she was the victim of qualifying criminal activity. On appeal, counsel submits a Notice of Appeal (Form I-290B), a brief and information on the Jamaican Constabulary Force.

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[.]

Regarding the definitions relevant to a Form I-918 U petition, the regulation at 214.14(a) states, 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 [and] children under 21 years of age . . . will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter[.]

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 Jamaica who claims to have last entered the United States on an unknown date without being inspected, admitted or paroled. On September 28, 2010, the petitioner filed the instant Form I-918 U petition. On February 2, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On October 17, 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.

Certified Criminal Activity

The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918, Supplement B), was signed by Penny Santana, Assistant District Attorney (certifying official) of the Bronx, New York District Attorney's Office. At Part 3.1, the certifying official indicated that the petitioner was a witness to criminal activity involving, or similar to, murder. At Part 3.3, the certifying official cited section 125.25 (second degree murder) of the New York Penal Law (NYPL) as the criminal activity.

At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as: "The victim, A-K-, was murdered by his own brother, D-L¹." At Part 3.6, the certifying official stated that the petitioner did not sustain any physical injury and that her boyfriend was the victim of a homicide. At Part 4.5, the certifying official stated that the petitioner "was cooperative throughout the prosecution of the case and testified at trial."²

¹ Names withheld to protect the individuals' identities.

² The Form I-918 Supplement B, dated February 16, 2011, is identical to one previously submitted and dated January 19, 2010.

In two identical letters, dated January 19, 2010 and February 16, 2011, the certifying official stated that the petitioner was helpful to the investigation and prosecution of the crimes committed by D-L- in that she: (1) discussed the criminal case with members of the New York City Police Department and employees of the Bronx County, New York District Attorney's Office; and (2) testified at trial as required. The certifying official stated that the petitioner has not been requested to provide any further assistance in the investigation and prosecution of the crimes committed by D-L- as the criminal case is now closed.

In a letter, dated February 2, 2011, Detective Corporal [REDACTED] of the Central Village Constabulary Station, Jamaica, states that R-P-³ was shot and killed by unknown assailants on November 9, 2004. The Detective states that prior to R-P-'s death gunmen had made several attempts on his life and the lives of other relatives, including the petitioner. The Detective states that the family house was shot at in 2000 and that R-P- had been previously shot and injured on December 18, 2002 during an incident in which another individual was shot and killed. The Detective states that the murder of R-P- is still under investigation and that the threats on the lives of the petitioner and other family members are still a live issue.⁴

An Incident History Report, dated October 22, 2000, indicates that a multiple dwelling fire occurred at [REDACTED]. The report does not indicate the cause of the fire, the outcome of the fire or the occupants of the dwelling.

The petitioner, in the attachment to the Form I-918 U petition, stated that she was nearby when A-K-, whom she was dating, was murdered by his brother on June 3, 2000, and that the two brothers had been engaged in an on-going argument in which D-L- issued threats against A-K-.

In an undated letter, the petitioner states that she testified at a murder trial in 2000 at the Bronx District Court and that she and her family have been threatened on numerous occasions as a result of her cooperation with the Bronx District Attorney. The petitioner states that she has lost her younger brother (R-P-) and her family lives with the fear that they may lose her. The petitioner states that in 2005 her daughter was in a bedroom at the petitioner's mother's house when a bullet came through the window. The petitioner claims that her mother was informed that this incident occurred because of the petitioner's cooperation with law enforcement and that a police report was filed with the Jamaican Police Department.

In an un-dated and un-signed psychosocial evaluation, [REDACTED], states that the petitioner reported witnessing arguments between A-K- and D-L- prior to A-K-'s murder; she was not a witness to the actual murder but arrived on the scene after following police cars, ambulances and sirens; her son, who was a witness to the murder, told her that D-L- had shot A-K-; after she and her son cooperated with the police she started to receive phone calls from people warning her not to testify; after she moved out of the house she shared with A-K- it was set on fire and she is

³ Name withheld to protect the identity of the individual. R-P- is the petitioner's alleged brother.

⁴ A Certificate of Coroner for R-P- indicates that he passed away on November 9, 2004 in Central Village, Jamaica, from multiple gunshot wounds.

sure that someone was trying to kill her; on November 9, 2004, her brother was tracked down and murdered in Jamaica; and when her three daughter's visited the petitioner's mother in Jamaica the house was shot at. Ms. [REDACTED] concludes that the petitioner exhibits symptoms of depression and post-traumatic stress and is trying to cope with the loss of two people she loved. Ms. [REDACTED] stated that the petitioner fears for her life, especially in Jamaica.

Analysis

On appeal, counsel contends that the petitioner is the victim of obstruction of justice and witness tampering because she and her family have received threats, her brother was killed, and her house in New York was burned. However, the certifying official did not indicate anywhere on the Form I-918 Supplement B that the petitioner was a victim of any criminal activity, including witness tampering or obstruction of justice; the certifying official indicated only that the petitioner was a witness to murder. Accordingly, we do not consider the crimes of obstruction of justice and witness tampering to have been investigated or prosecuted by the certifying agency, and the record contains no evidence that the certifying agency intends to investigate or prosecute such a crime in the future.

When a person is deceased due to murder or manslaughter and was over the age of 21 at the time of death, only the deceased's spouse and children under the age of 21 will be considered victims of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(i). The petitioner has no standing to be considered a victim of qualifying criminal activity based solely on her status as the deceased's girlfriend or fiancée.

The petitioner also has not established that she is the victim of qualifying criminal activity as that term is defined at 8 C.F.R. § 214.14(a)(14). 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. According to Part 3.11a of the Form I-918 U petition, the petitioner stated that she followed A-K- in her car as he was going to meet his brother, D-L-. She stated further:

[I]t was while I was following [A-K-] that I noted police cars and sirens headed in the same direction as myself. I arrived at the location where [A-K's] car was parked a little after the emergency vehicles arrived. Upon arriving at the scene I learned that [D-L-] had shot [A-K-] several times. My son and another witness informed the police that [D-L-] was the shooter. . . . My son identified [D-L-] as [A-K's] shooter and we were taken to the police station where we provided the necessary statements, my son identifying [D-L-] as the shooter while I identified him as the person who had issued threats.

Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a witness to the murder of A-K-, according to her statement, the petitioner was not in the vicinity when the shooting took place, as she arrived at the scene after the emergency vehicles. As she noted, the petitioner was a witness to the threats that D-L- had made against A-K-, not to A-K's murder.

The definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14) does not encompass an adult victim’s girlfriend or fiancée who suffers indirect harm. By creating a specific “indirect victim” definition for specific 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 her boyfriend’s murder.

As the petitioner has failed to establish that she is a victim of a qualifying crime, as that term is defined at 8 C.F.R. § 214.14(a)(14), she cannot establish that she suffered substantial physical or mental abuse as the victim of qualifying criminal activity.

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.