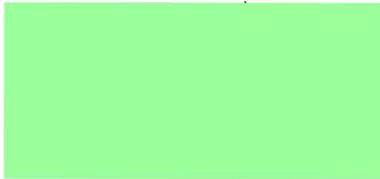


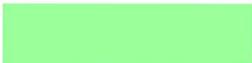
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS-2090
Washington, DC 20529-2090



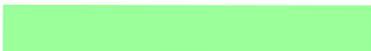
U.S. Citizenship
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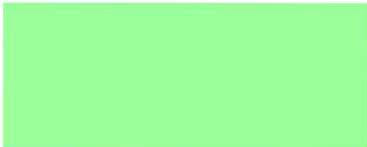
Date: Office: VERMONT SERVICE CENTER FILE: 

APR 19 2013

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:

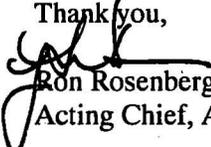


INSTRUCTIONS:

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition (Form I-918 U petition). The petitioner filed an out of time appeal which the director treated as a motion to reopen and subsequently affirmed his prior decision. 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 for failure to establish that the petitioner was the victim of qualifying criminal activity and suffered resultant physical or mental abuse. On appeal, counsel submits additional evidence, including a new declaration from the petitioner.

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; stalking; 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

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justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. §1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

The regulations governing the U nonimmigrant classification at 8 C.F.R. section 214.14(a) 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 eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

¹ The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4, (VAWA 2013) that came into effect on March 7, 2013 was amended to include stalking and fraud in foreign labor contracting.

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).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in July of 1999 without being inspected, admitted or paroled. On September 14, 2010, the petitioner filed the instant Form I-918 U petition. On January 14, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On June 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 submitted an untimely appeal which the director treated as a motion to reopen, and affirmed his denial decision. The petitioner timely appealed the decision on the motion to reopen.

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 Detective [REDACTED] of the Dekalb Police Department (certifying official). At Part 3.1, the certifying official identified the crime as murder but did not list any statutory citation for the crime investigated or prosecuted at Part 3.3. At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as "investigating the murder of a family member." At Part 3.6, the certifying official did not describe any known or documented injury to the petitioner. At Part 3.2, the certifying official indicated that the qualifying crime occurred on April 22, 2007, when the petitioner was 27 years old. The petitioner also submitted an affidavit in which he stated that he was not present at the time the murder occurred, and that he found out later from the police that his brother had been burned to death in a car.

While it is clear that the petitioner has been affected by the murder, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). The petitioner was over the age of 18 years when the qualifying crime occurred and, therefore, cannot qualify as a victim of his brother's murder under 8 C.F.R. § 214.14(a)(14)(i).²

² While the petitioner failed to show that his brother was under 21 years at the time of his murder, the brother's age is not relevant because the petitioner was 27 years old at the time of the murder.

The director noted that the petitioner did not qualify as a general victim because he had not established that he had suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence." *Id.* at 9. The evidence shows that the petitioner was not present at the time of the murder and only learned of it later from a detective. Although the record shows that the petitioner has been greatly affected by the murder of his brother, there is no support for the petitioner's claim that he was directly or proximately harmed by the criminal activity perpetrated against his brother. The petitioner has, therefore, failed to show that he is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he suffered substantial physical or mental abuse as a result of such victimization. Even if his victimization was established, however, the record does not show that he suffered substantial physical or mental abuse as a result.

In his March 29, 2011 statement, the petitioner recounted that while DNA testing was being conducted to determine if the body found in the car was his brother, he was sad and depressed. The petitioner also submitted a mental health evaluation by [REDACTED] a licensed counselor, and [REDACTED] a social worker, who stated that as a consequence of the petitioner's brother's death, he is showing some symptoms of depression and anxiety, and meets the diagnosis of Major Depression and Posttraumatic Stress Disorder (PTSD). The evaluators also noted that the petitioner was the victim of armed robbery after his brother's murder. They listed the petitioner's psychosocial stressors as "trauma and victim of assault, immigration status." It is unclear from the evaluation which symptoms reported by the petitioner are a result of his brother's death as opposed to his being the victim of an armed robbery or other problems in his life, such as his immigration status. The evaluators also recommended that the petitioner be evaluated by a psychiatrist and submit to psychotherapy. The petitioner has provided no evidence of any subsequent treatment for any mental health problems.

We recognize the petitioner's sadness that his brother's murder instilled, however, the petitioner's affidavit and relevant evidence do not establish that he suffered resultant substantial physical or mental abuse. The petitioner has not provided sufficient evidence that his depression, anxiety and PTSD are solely a result of his brother's death and amount to substantial mental abuse under the

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factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

As the petitioner did not establish that he met the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14), he has also failed to establish that he meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for U nonimmigrant classification 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.