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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



Date: **MAR 25 2013**

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)

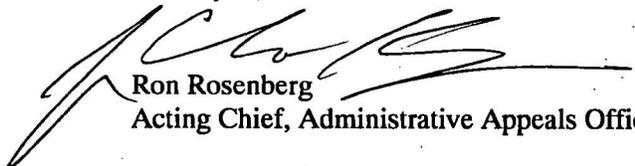
ON BEHALF OF PETITIONER:



**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.

Thank you,

  
Ron Rosenberg  
Acting 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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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 because the petitioner did not establish that he was a victim of a qualifying criminal activity, and he was therefore unable to establish that he suffered substantial physical or mental abuse as the result of qualifying criminal activity, that he possessed information regarding the qualifying activity, and that he had been helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. The director also noted that the petitioner is inadmissible to the United States. On appeal, counsel submits a brief and copies of previously submitted evidence.

*Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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 governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in pertinent part:

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

\* \* \*

(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[.]

Furthermore, under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Pursuant to the regulations, the petitioner also must show that "since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). This regulatory provision "exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner "only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

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. 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, 8 U.S.C. § 1184(p)(4).

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who states that he last entered the United States without inspection, admission or parole in February, 2006. On June 1, 2011, the petitioner filed the instant Form I-918 U petition. On March 14, 2012, the director issued a Request for Evidence (RFE). The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility for U nonimmigrant classification. Accordingly, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner filed a timely appeal of the denial of the Form I-918 U petition.

#### *Analysis*

In his May 2, 2011 and April 17, 2012 affidavits, the petitioner recounted that in October 2006, he was home with his family when they heard screaming and yelling outside. The petitioner stated that he then heard an unknown person trying to open his front door, which was locked. Moments later he heard a

gunshot, and he and his children hid behind his couch. The petitioner then heard something fall to the ground right outside his front door. When he opened the door, he found his neighbor lying dead on his doorstep with a hole in her head where she had been shot. The petitioner recalled that her body had fallen upon his door so when he opened it, her head fell to the ground in his doorway and her blood spilled all over his door and into his house. The petitioner stated that he saw the neighbor's boyfriend driving away in his vehicle and the next day someone called him and threatened him and his family with harm if he testified at the trial. Despite his ensuing confusion and fear, the petitioner testified at court as a witness to the murder. The petitioner credibly described the fear he and his family felt as a result of this incident, as well as the depression, anxiety, insomnia and guilt that he has experienced since he found his neighbor dead on his doorstep.

The Form I-918 Supplement B submitted by the petitioner was signed by [REDACTED] Sergeant of the Edgewater, Colorado, Police Department. At Part 3.1 on the Form I-918 Supplement B, the certifying official identified the crime as other: "Murder Witness." At Part 3.3, the certifying official stated that the crime investigated or prosecuted was section 18.3.102 of the Colorado Revised Statutes (Colo. Rev. Stat.) (murder in the first degree). At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as the petitioner's neighbor being shot with a shotgun in the back of the head at the petitioner's front door. The certifying official affirmed that the petitioner "was very helpful and cooperated fully with the investigation and prosecution. [The petitioner] testified at the trial which resulted in a conviction for Murder in the first degree."

In his denial decision, the director determined that the petitioner had failed to meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act (substantial physical or mental abuse, possession of information, helpfulness and jurisdiction over the criminal activity) because he was not the victim of a qualifying crime. However, the preponderance of the evidence submitted below and on appeal demonstrates that the petitioner was a victim of the qualifying crime, and has met the other requirements.

The record shows that the petitioner was a victim under the regulation at 8 C.F.R. § 214.14(a)(14) because he suffered direct and proximate harm as a bystander to a violent crime. 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 present at the time of the murder and witnessed his neighbor's death after she was shot in the head at his front door. The Form I-918 Supplement B and other relevant evidence confirms that murder, a qualifying crime, was investigated and prosecuted and that the petitioner possessed information about the murder and was

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helpful to the police in the investigation and prosecution of the qualifying crime. The petitioner has, therefore, established that he is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Furthermore, the statements from the petitioner, his wife and friends, and the evaluation of licensed clinical psychologist [REDACTED] provide probative details of the nature and duration of the petitioner's resultant mental health conditions as well as the serious harm to the petitioner's mental soundness. Specifically, [REDACTED] who is Board Certified in Forensic Traumatology, diagnosed the petitioner with Major Depression (recurrent and severe) and Posttraumatic Stress Disorder (PTSD) (chronic) based on psychological testing and her lengthy interviews with the petitioner. [REDACTED] substantively described and explained how the petitioner's mental health was impacted by his witnessing the murder and how he had continued to experience posttraumatic symptoms ever since that time. [REDACTED] further opined that the petitioner's PTSD symptoms had been exacerbated by having to recall the murder during his immigration proceedings. The preponderance of the evidence shows that the petitioner has suffered substantial mental abuse as a result of being the victim of a qualifying crime, as required by subsection 101(a)(15)(U)(i) of the Act, and the director's contrary decision is withdrawn.

We also withdraw the director's determination that the petitioner did not possess information concerning the qualifying criminal activity and was not helpful to law enforcement authorities, as the certifying official indicated on the Form I-918 Supplement B that these eligibility criteria were met.

### *Inadmissibility*

The record indicates that the petitioner is inadmissible under subsections 212(a)(6)(A)(i) and (a)(9)(B)(i)(II) of the Act for being present in the United States without admission or parole and for unlawful presence exceeding one year. In his May 2, 2011 affidavit and on his Form I-918 petition, the petitioner stated that he first entered the United States in 1997 without admission or parole, left in December 2005 and returned to the United States, again without admission or parole, in February 2006. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. Here, the director denied the petitioner's Form I-192 solely on the basis of the denial of the Form I-918 petition. *See Decision of the Director on Application for Advance Permission to Enter as an Immigrant*, dated July 3, 2012. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, as the sole ground for denial of the petitioner's Form I-192 has been overcome on appeal, we will return the matter to the director for reconsideration of the Form I-192.

### *Conclusion*

On appeal, the petitioner has overcome the director's grounds for denial and has established his

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statutory eligibility for U nonimmigrant classification. Because the petitioner remains inadmissible to the United States, the matter will be remanded to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on the Form I-918, which shall be certified to the AAO for review if adverse to the petitioner.

**ORDER:** The July 3, 2012 decision of the Vermont Service Center is withdrawn and the matter is returned to the director for reconsideration of the petitioner's Form I-192 and issuance of a new decision on his Form I-918 petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.