



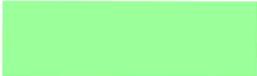
U.S. Citizenship
and Immigration
Services

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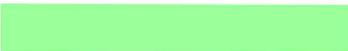


Date: OCT 22 2013

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:

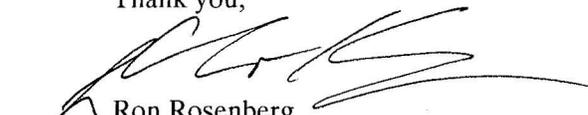


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition (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 for failure to establish that the petitioner was the victim of qualifying criminal activity and met the other eligibility requirements. On appeal, counsel submits a brief.

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 (ii); 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: . . . manslaughter; murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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."

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).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who last entered the United States on or about August 1, 2011 without being inspected, admitted or paroled. On January 17, 2012, the petitioner filed the instant Form I-918 U petition. On May 11, 2012, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On August 10, 2012, 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.

Analysis

The relevant evidence submitted below 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 Chief of Police [REDACTED] Iowa Police Department (certifying official). At Part 3.1, the certifying official identified the crime as murder and listed the statutory citation for the crime at Part 3.3 as Iowa Code § 708.2 (first degree homicide). At Part 3.5, the certifying official described the involvement of the petitioner in the criminal activity being investigated or prosecuted as being "an eyewitness in a double homicide." The petitioner also submitted a personal statement in which he stated that he was present when another individual shot three people, two of whom died.

While it is clear that the petitioner has been affected by the shooting, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). The record does not show that he suffered direct and proximate harm as a result of witnessing the homicides. As counsel admits in his brief, the petitioner *witnessed* the murders – he was not the victim of the murders, as he was not one of the individuals who was shot and killed. In cases involving murder, the regulation only contemplates indirect victims to be immediate relatives of the murdered victim. 8 C.F.R. § 214.14(a)(14)(i).

Counsel also asserts that because the certifying official checked the box for murder at part 3.1 of the Form I-918 Supplement B, the petitioner has been a victim of qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of murder, the evidence in the record does not demonstrate that the petitioner's murder was investigated or prosecuted, but rather that the petitioner witnessed the murders of other individuals.¹

¹ On appeal, counsel contends that the director erred by relying on the fact that the petitioner's name was not mentioned in the police report, since counsel claims the petitioner was "mentioned, not by name, but circumstantially." Petitioner's Brief on Appeal at 4. Regardless of whether the petitioner was referenced in the police report, he was not identified as a victim of the murders in the report.

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 statement, the petitioner stated generally that he is depressed, anxious, has nightmares, and fears retribution from the perpetrator. In her statement, the petitioner's wife also confirmed that the petitioner is stressed and has nightmares. We recognize the petitioner's fear and feelings from having witnessed the murders, however, the petitioner and his wife's affidavits fail to probatively discuss the effects of the claimed victimization on the petitioner's physical and mental health. Neither the petitioner nor his wife discuss, for example, any permanent or serious harm the incident caused to the petitioner's appearance, health, or physical or mental soundness.² On the Form I-918, Supplement B, the certifying official did not list any known injury to the petitioner. The preponderance of the relevant evidence does not establish that the petitioner suffered substantial physical or mental abuse under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

Conclusion

The petitioner has failed to establish that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act and described in 8 C.F.R. § 214.14(a)(14). Although the petitioner possessed information and was helpful to the investigation or prosecution of a crime that occurred in the United States, the relevant evidence does not establish that the petitioner was the *victim* of the homicides he witnessed. The petitioner is consequently ineligible for U nonimmigrant classification and his petition must remain denied.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

² Counsel asserts that the petitioner could not afford a psychological evaluation and that because he was in the custody of immigration officials, he was unable to access mental health treatment. Petitioner's Brief on Appeal at 5. Though a petitioner may submit a psychological evaluation, such evidence is not required for the approval of a Form I-918. USCIS will consider all credible evidence relevant to the petition. 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).