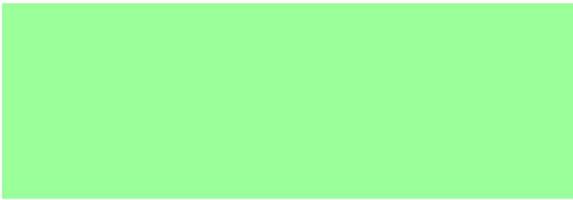




U.S. Citizenship
and Immigration
Services

(b)(6)

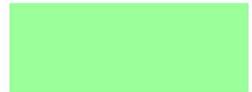


Date: **SEP 23 2013**

Office:

VERMONT SERVICE CENTER

FILE:



IN RE:

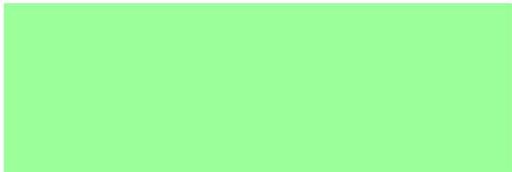
PETITIONER:



APPLICATION:

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. The Administrative Appeals Office (AAO) dismissed the subsequent appeal, and the matter is again before the AAO on motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the underlying 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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The AAO dismissed the petitioner's appeal and rejected the petitioner's second appeal for lack of jurisdiction. On May 13, 2013, the AAO granted the petitioner's first motion to reopen but affirmed the dismissal of the appeal because the new evidence still failed to establish that she was the victim of a qualifying crime or any qualifying criminal activity. With the present motion, counsel submits additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

- (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 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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(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

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Pertinent Facts and Procedural History

As the facts and procedural history were adequately documented in our previous decisions, we shall repeat only certain facts as necessary. The petitioner is a native and citizen of Argentina who was admitted to the United States in April 2000 as the spouse of a religious worker. She was accompanied by her three children, a son and two daughters. The petitioner's husband was accused of molesting young male boys, including his nephew, and was the focus of a sodomy investigation in Illinois and Virginia. The petitioner later learned her husband had also molested their own children but she did not file a report with the police. Based on a law enforcement certification (LEC) from a criminal investigator in Virginia, the petitioner filed a request for U nonimmigrant status and was granted interim relief on January 30, 2007. The investigator indicated that he was assisting the Cook County, Illinois Sheriff's Office in locating the petitioner's husband for a sodomy investigation that concerned "two sex violations in Illinois involving young male victims and other possible violations in Virginia." He also indicated that the petitioner was helpful in the investigation but neither the petitioner nor her children were listed as victims on the LEC.

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

The petitioner filed the instant Form I-918 U petition on February 15, 2008. The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity. On appeal, counsel asserted that the investigator's reference to "other possible violations in Virginia" in the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), related to the petitioner's children. In its January 11, 2012 decision on appeal, incorporated here by reference, the AAO explained that the relevant evidence did not demonstrate that law enforcement authorities detected or investigated any claims of sexual abuse by the petitioner's husband against her children, and therefore, she had not established that she was the victim, either direct or indirect, of a qualifying criminal activity. In its May 13, 2013 decision on the petitioner's first motion, incorporated here by reference, the AAO acknowledged that the petitioner had re-reported the crimes and obtained a protective order against her husband but explained that the record still lacked evidence that any certifying agency had investigated or prosecuted qualifying criminal activity committed against her or her children.

On motion, counsel submits a two-page letter and a newly certified Form I-918 Supplement B. Counsel's submission meets the requirements for a motion to reopen, but not a motion to reconsider. See 8 C.F.R. § 103.5(a)(2)-(3). The new Form I-918 Supplement B was signed by [REDACTED] Deputy Chief of Investigations, Cook County, Illinois Police Department (certifying official), on June 3, 2013. The certifying official lists the victim at Part 1 as the petitioner's nephew and the petitioner as an indirect victim. He states the criminal activity investigated or prosecuted at Part 3.1 was abusive sexual contact. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that there was a four year delay in reporting the sexual fondling of an 11 year old boy by a 40 year old man. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated "none."

In her letter in support of the motion, counsel states that the petitioner and her children were indirect or bystander victims to the abusive sexual contact that was committed against the petitioner's nephew. Counsel claims that the petitioner's husband fled the country before a full investigation could be conducted against him for the sexual abuse against the petitioner's nephew and her own children.

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 qualifying criminal activity. The Attorney General Guidelines for Victim and Witness Assistance (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 its Preamble to the U visa rule, United States Citizenship and Immigration Services (USCIS) stated:

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime.

As an aunt, the petitioner cannot qualify as an indirect victim based solely on her familial relationship to the victim. The regulation limits indirect victims to certain immediate family members of direct victims of murder or manslaughter or who have been rendered incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i). 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, there is no evidence in the record that the petitioner witnessed the crime committed against her nephew. The evidence also does not establish that she otherwise suffered an unusually direct injury resulting from her nephew’s victimization. Although the new Form I-918 Supplement B identifies the petitioner as an indirect victim of the sexual abuse against her nephew, the certifying official stated that the petitioner suffered no injury. In addition, the new Form I-918 Supplement B is dated over five years after this petition was filed and consequently cannot be considered in these proceedings. *See* 8 C.F.R. § 214.14(c)(2)(i) (requiring the Supplement B to have been signed by the certifying official within the six months preceding the filing of the Form I-918 petition); 8 C.F.R. § 103.2(b)(1) (petitioners must establish eligibility at the time of filing). The prior LEC also did not identify the petitioner or her children as victims of the sodomy investigated by the certifying agency. Consequently, the additional evidence and claims submitted on motion do not demonstrate that the petitioner was a victim of the qualifying criminal activity certified in this case.

In addition, there is no evidence that law enforcement authorities investigated or prosecuted any claims of sexual abuse by the petitioner’s husband against their own children. As noted in our previous decisions, none of the documents from the certifying agency name the petitioner’s children as victims, or make any reference to the petitioner’s husband’s sexual abuse of their children. Counsel claims that when the petitioner confided the sexual abuse of her children to the church psychologists, they failed to report the crimes because they were being paid by the same church that hid the petitioner’s husband’s crimes. In addition, the petitioner explained that when the initial police report was made, she did not yet know that her children had also been victims of her husband’s molestation. While the record indicates that the petitioner and her children were seriously harmed by her husband; without evidence that law enforcement authorities detected, investigated, or prosecuted sexual abuse or any other qualifying crime by her husband against their children, the petitioner has not established her eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Conclusion

The record in this case shows that the petitioner’s husband was investigated for sodomy and abusive sexual contact against her nephew and other victims. The relevant evidence does not demonstrate that the petitioner was a victim of her husband’s abusive sexual contact of her nephew, the only certified criminal activity in this case. The petitioner attests that her husband also molested their own children and explains why she did not report his offenses to the police. However, the law enforcement certification does not name the petitioner or her children as victims of her husband’s offenses and the record contains no evidence that the certifying agency investigated or prosecuted any qualifying crimes perpetrated against the petitioner or her children. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

(b)(6)

NON-PRECEDENT DECISION

Page 6

The appeal will remain 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 motion is granted. The appeal remains dismissed and the petition remains denied.