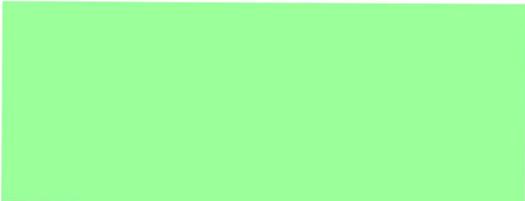


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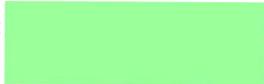


U.S. Citizenship
and Immigration
Services

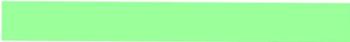


Date: **DEC 05 2014**

Office: VERMONT SERVICE CENTER

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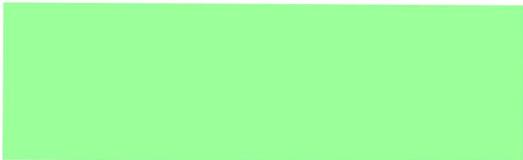
IN RE:

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 because the petitioner failed to establish that she was the victim of qualifying criminal activity as defined at 8 C.F.R. §214.14(a)(14). On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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: . . murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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

(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.

* * *

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 [U.S. Citizenship and Immigration Services (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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in 2001 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), on November 5, 2012. On October 22, 2013, the director issued a Request for Evidence (RFE) establishing that the petitioner is a victim of qualifying criminal activity as defined by regulation. The petitioner responded to the RFE with a statement from counsel, an updated personal statement from the petitioner, a court custody order giving petitioner custody of one of her murdered sister's children, and a psychological evaluation prepared by Dr. [REDACTED] Psy.D. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on February 11, 2014, concluding that the petitioner had not established that she was a victim of qualifying criminal activity. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, counsel submits a brief statement, asserting that the petitioner is a victim of and suffered direct and proximate harm as a result of the commission of the qualifying criminal activity of murder.

Claimed Criminal Activity

The petitioner, in her personal statements, detailed the circumstances of her sister's murder on the evening of January 20, 2012. The petitioner recalled hearing police and ambulance sirens and becoming concerned about her sister, [REDACTED] with whom she had just spoken to about an hour before. After speaking with her brother, the petitioner and children drove down to [REDACTED] home where she found [REDACTED] on the ground with ambulance paramedics working on her. [REDACTED] three children then informed the petitioner that their father had stabbed their mother. [REDACTED] was unconscious when the petitioner and her other siblings were eventually allowed to see her. She died later that night at the hospital from her multiple stab wounds.

According to a psychological evaluation from Dr. [REDACTED], the petitioner reported that [REDACTED] marriage of fifteen years was an abusive one and that the petitioner often found herself running over to calm [REDACTED] husband down, although she had never believed he would kill [REDACTED]. The petitioner reported that on the day of the incident, she had spent the most of the day of with her sister, who at one point said she did not want to go home. The petitioner reported being in complete shock at what had happened to her sister, and stated that she is particularly devastated that her sister's sons had witnessed their father murdering their mother. According to the children, their mother had been calling out to them for help while she was being stabbed, prompting them to call for help. The petitioner obtained guardianship over [REDACTED] youngest son, and recounted his inability to sleep and the severe nightmares he suffered after having witnessed his mother's murder.

The Form I-918 Supplement B that the petitioner submitted was signed on October 2, 2012 by [REDACTED] Assistant District Attorney, [REDACTED] County District Attorney's Office, [REDACTED] Georgia (certifying official). In Part 3.1, which inquires about the criminal activity of which the petitioner was a victim, the certifying official checked the box murder. Although the certifying official failed to set forth the relevant criminal statutes corresponding to the charges that were actually investigated or prosecuted, the record contains criminal and juvenile court records indicating that the incident was investigated as a

murder and that the perpetrator was indicted on several charges, including malice murder and felony murder. In Part 4.5 of the form, the certifying official stated that the petitioner came to court whenever requested. The police incident report in the record indicated that the one of [REDACTED] minor sons had contacted authorities to report that their mother's throat had been cut and that their father had stabbed her. The report stated that by the time police arrived on the scene, [REDACTED] had already been stabbed multiple times and was surrounded by her minor sons, one of whom was holding her head up.

Analysis

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the director's decision to deny the petition on the stated grounds.

The petitioner has established that she is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Pursuant to the regulation at 8 C.F.R. § 214.14(a), a "victim of qualifying criminal activity" is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. The spouse and children of the direct victim, or the parents and unmarried siblings under 18 years of age of a direct victim who is under 21 years of age, will also be considered victims of qualifying criminal activity if the direct victim is deceased due to murder or manslaughter. 8 C.F.R. § 214.14(a)(14)(i). In the instant matter, the direct victim of criminal activity on January 20, 2012 was the petitioner's now deceased sister. The record indicates that the petitioner does not qualify as an indirect victim under clause (i) of 8 C.F.R. § 214.14(a) based solely on her relationship to the direct victim. Although the petitioner is a sibling of the direct victim, the petitioner's sister was not under 21 years of age and the petitioner was not under 18 years of age at the time of the criminal activity, as required by 8 C.F.R. § 214.14(a)(i) to qualify as an indirect victim through a sibling relationship.

A review of the record, including the evidence submitted on appeal, however, demonstrates that the petitioner has suffered direct or proximate harm as a bystander to a violent crime and, consequently, qualifies as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a).

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.

The petitioner arrived on the scene shortly after the stabbing and witnessed her sister's unconscious and injured body lying in blood and her nephews, who were present at stabbing, standing close by. Although her sister was still alive at that time she arrived at the scene, she later died in the petitioner's presence at the hospital for multiple stab wounds to her torso and neck. Dr. [REDACTED] evaluation and the petitioner's own statements evidence the petitioner's close relationship with her deceased sister and the

ongoing suffering and emotional harm she continued to face in the aftermath of the tragedy, including caring for the emotional and physical health of her sister's son who witnessed the murder of his mother. Dr. [REDACTED] evaluation of the petitioner further provides that the petitioner has been diagnosed as suffering from posttraumatic stress disorder, major depressive disorder, and anxiety disorder, as a result of the violent trauma of her sister's murder by her sister's spouse. The Form I-918 Supplement B and other relevant evidence confirms that murder, a qualifying crime, was investigated and prosecuted, that the petitioner possessed information about the murder and was helpful to the police in the investigation and prosecution of the qualifying crime, and that the petitioner suffered resultant substantial mental abuse. A preponderance of the evidence demonstrates that the petitioner is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act and we withdraw the director's contrary determination.¹

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. 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 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the director denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated February 11, 2014. The record indicates that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act, which renders inadmissible any alien present in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). The petitioner indicated in her statement, dated October 9, 2012, that she last entered the United States in 2001 without inspection, admission or parole. The director did not assess the petitioner's inadmissibility and denied her waiver request based solely on the denial of her Form I-918 U petition. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

¹The director approved the Form I-918 U petitions filed by the petitioner's two other siblings, who also arrived at the scene of the criminal activity along with the petitioner. Each sibling subsequently obtained custody of one of their deceased sister's sons.

Conclusion

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 been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The February 11, 2014 decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.