



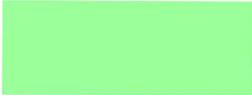
U.S. Citizenship
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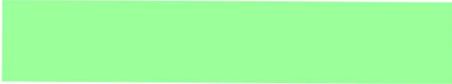


Date: **DEC 12 2014**

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:

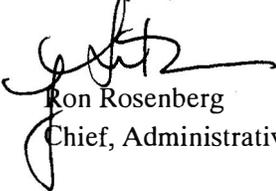


INSTRUCTIONS:

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

Page 2

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 appeal will be dismissed and 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 because the petitioner failed to establish that she was a victim of qualifying criminal activity. On appeal, counsel submits a mental health evaluation for the petitioner.

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;

Rape is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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, 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, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

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.”

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on March 3, 2004 without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on February 26, 2013. On November 20, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered direct and proximate harm, as well as substantial physical or mental abuse, as the result of the commission of qualifying criminal activity toward her niece. The petitioner responded with a statement and additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the Form I-918 U 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. On appeal, counsel submits a mental health evaluation for the petitioner.

*Analysis*¹

The Form I-918 Supplement B that the petitioner submitted was signed by Sergeant [REDACTED] California, Sheriff’s Department (certifying official), on September 14, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as rape. In Part 3.3, the certifying official referred to California Penal Code (CPC) §§ 261(A)(2) (rape), 261.5(D) (unlawful sexual intercourse with a minor), and 288(B)(1) (lewd or lascivious acts with a child), as the criminal activities that were investigated or prosecuted. At Parts 3.5 and 3.6, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted and any known or documented injury to the petitioner, he stated “refer to report.” The [REDACTED] Sheriff’s Crime Report submitted by the petitioner indicates that the crimes investigated were rape, unlawful sexual intercourse with a minor, and lewd and lascivious acts with a child; the victim is listed as confidential (Conf.) because of her age; and the petitioner is not listed as a victim or witness. According to a responding police officer in the crime report:

¹ We conduct appellate review on a *de novo* basis.

“Conf. told me that on today’s date, she delivered a baby boy at her residence. Conf. said that the baby was a result of being raped on 04-28-10, at about 1300 hours, by her former supervisor Conf. didn’t tell anyone of the incident, because she was scared of [the suspect].”

In her first statement submitted with the Form I-918 U petition, the petitioner described the rape of her niece by her niece’s supervisor and the birth of her niece’s child. She stated that when the police interviewed her niece in the hospital after the birth of her baby, she interpreted for her in their native language. She claimed that the suspect’s wife called her at home and harassed her. According to the petitioner, she took care of her niece and the baby after they were released from the hospital, and when her niece went back to work, she took care of the baby. During the criminal court proceedings against the suspect, the petitioner attended all the hearings with her niece and interpreted for her. The suspect was convicted of raping the petitioner’s niece, but the petitioner is afraid of what will happen when the suspect is released.

In her second statement submitted in response to the RFE, the petitioner stated that she has memories of her niece giving birth in the bathroom and having “to give the baby first aid” after he was born in a toilet. The petitioner again explained how she supported her niece through the criminal court proceedings “like she was one of [her] own daughters.” She stated that her own relationship with her partner has suffered because of all the support she gave her niece, and he has even abused her in the past. In his mental health evaluation, Mr. [REDACTED] a licensed clinical social worker, indicates that according to the petitioner, the petitioner’s niece has returned to Mexico with her baby.

The petitioner has not established that she is an indirect victim of the criminal activity perpetrated against her niece. First, the petitioner does not have one of the familial relationships to the victim as described at 8 C.F.R. § 214.14(a)(14)(i). Second, the petitioner also does not meet the general “victim” definition at 8 C.F.R. § 214.14(a)(14), which provides that a victim of qualifying criminal activity is an alien who “has suffered direct and proximate harm as a result of the commission of 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, 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[.]

72 Fed. Reg. 53014, 53016 (Sept. 17, 2007).

According to the evidence in the record, the petitioner was not in the vicinity when the certified criminal activity occurred and only became aware of the offense months later when the petitioner’s niece gave birth.

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, the crime report does not list the petitioner as a witness or victim. We recognize that the petitioner has been emotionally impacted by the rape of her niece, she assumed more family responsibilities by helping to take care of her niece and the baby, and she was helpful to law enforcement authorities in interpreting for her niece during the criminal court proceedings; however, the evidence does not establish that the petitioner was a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against her niece. The petitioner has, therefore, failed to establish that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

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 not been met.

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