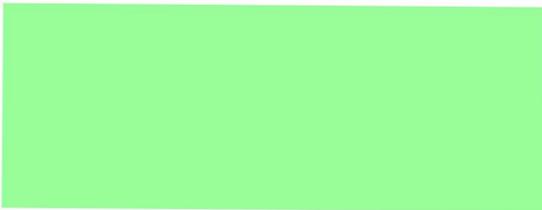




U.S. Citizenship  
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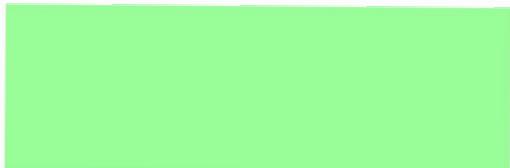


Date: **DEC 12 2014** Office: VERMONT SERVICE CENTER FILE:

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

**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 the victim of qualifying criminal activity or had suffered resultant substantial physical or mental abuse. On appeal, counsel submits a brief, additional evidence, and copies of documents already included in the record.

*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;

Murder 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.

As used in section 101(a)(15)(U)(i)(I) of the Act, the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) 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 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[.]

\* \* \*

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 initially attempted to enter the United States on July 6, 1997 with a border crossing card in someone else's name. On July 9, 1997, the petitioner was expeditiously removed from the United States. The petitioner claims that she entered the United States in June 2000 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 July 25, 2012. On September 17, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of the murder of her sister-in-law and that the petitioner was directly or proximately harmed by the qualifying criminal activity. The petitioner, through counsel, responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. Counsel claims that the petitioner qualifies for a U nonimmigrant visa as a direct and indirect victim of her sister-in-law's murder and she has suffered substantial physical or mental abuse as a result of the murder.

*Analysis*<sup>1</sup>

The Form I-918 Supplement B that the petitioner submitted was signed by Captain [REDACTED] Special Victim Crime Unit, [REDACTED] California, Police Department (certifying official), on January 27, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as murder. In Part 3.3, the certifying official referred to California Penal Code (C.P.C.) § 187, murder, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner's sister-in-law was murdered by her husband, their three children were the victims of the murder, and the petitioner adopted the three children. At Part 3.6, the certifying official indicated that "[t]he police report does not document injury to the children or to [the petitioner]. The family was referred to Victim Services to receive support and assistance."

In her statements, the petitioner explains that she and her sister-in-law grew up together in a small town in Mexico and were very close. In 1997, after her sister-in-law married her husband, the couple moved to the United States. When the petitioner arrived to the United States in 2000, her sister-in-law told her that she was being abused by her husband. Over the years, the petitioner's sister-in-law confided in the petitioner regarding the domestic violence but made her promise to not tell anyone especially since the petitioner was married to her brother. In February or March 2009, the petitioner's sister-in-law and her husband separated. At first their relationship appeared to be amicable but the petitioner's sister-in-law's husband discovered that his wife had a boyfriend and became jealous. On the evening of June 13, 2009, the petitioner's sister-in-law had her friend watch her three children while she went out for the night. When the petitioner's sister-in-law's boyfriend dropped her off at home on the morning of June 14, 2009, her husband was waiting for her inside her house and strangled her to death. On June 15, 2009, the petitioner learned of her sister-in-law's death, and took custody of her three nieces. On February 2, 2011, the petitioner and her

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<sup>1</sup> We conduct appellate review on a *de novo* basis.

  
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husband formally adopted their three nieces. The petitioner's sister-in-law's husband has not been arrested for the murder and is a fugitive.

### Victim of Qualifying Criminal Activity

When a person is deceased due to murder or manslaughter and was over the age of 21 at the time of death, only the deceased's spouse and children under the age of 21 may be considered the indirect victims of the qualifying criminal activity. *See* 8 C.F.R. § 214.14(a)(14)(i).<sup>2</sup> The petitioner is not an indirect victim based on her and her sister-in-law's familial relationship. Only the sister-in-law's three children could be eligible as indirect victims under the pertinent definition at 8 C.F.R. § 214.14(a)(14)(i) because they are "the deceased's . . . children under the age of 21 . . . ."<sup>3</sup>

On appeal, the petitioner claims through counsel that as the adoptive parent of her sister-in-law's children, she qualifies as a "parent" under the second clause of the victim definition at 8 C.F.R. § 214.14(a)(14)(i). The clause states, in pertinent part: "if the direct victim is under 21 years of age, parents . . . will be considered [indirect] victims of qualifying criminal activity where the direct victim is deceased due to murder . . . ."

The petitioner confuses the term "direct victim" as used in the regulation with the term "indirect victim" as discussed in the Preamble to the U visa rule. A child under the age of 21 may qualify as an indirect victim if his or her parent (the direct victim) was murdered. The regulation does not allow the child of a murder victim to become the "direct victim" such that the child's adoptive parent can then be classified as an "indirect victim." There is no provision in the statute or the regulations for derivative classification of a family member of an indirect victim, such as the petitioner asserts on appeal, and we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). Therefore, the petitioner cannot qualify as an indirect victim as the adoptive mother of the direct victim's children.

Alternatively, the petitioner claims that she is a direct victim of her sister-in-law's murder because she has suffered direct and proximate harm. The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as 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:

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<sup>2</sup> The term "indirect victims" is discussed in the Preamble to the U visa rule. *See* 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

<sup>3</sup> Family members who are recognized as indirect victims are eligible to apply for U nonimmigrant status as principal petitioners, but they must meet all of the eligibility requirements that the direct victim would have had to meet in order to be accorded U nonimmigrant status.

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). The petitioner claims that she is responsible for her sister-in-law's three children who have suffered significant grief and trauma as a result of their mother's murder and witnessing years of domestic violence between their mother and father. In addition, the petitioner's relationship to her biological children and husband has suffered because of the additional stress of taking care of her adopted children. Further, the petitioner is suffering from anxiety, stress and survivor's guilt, which is manifesting into physical ailments.

In her declaration dated February 5, 2014, the petitioner states that her family has had "emotional challenges" to overcome since her sister-in-law's murder, from dealing with the emotional issues of her adopted children to jealousy issues with her biological children and husband. In addition, the petitioner has difficulty sleeping since her sister-in-law's murder and she suffers from stomach problems caused by stress. However, she understands she "will not be able to have a life free of stress" as the mother of six children and she does not want her adopted children to live with anyone else.

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 record shows that the petitioner was not in the vicinity or witnessed any aspect of the commission of the qualifying criminal activity. We recognize that the petitioner has been greatly affected by the murder of her sister-in-law and has assumed additional family responsibilities since the crime occurred; however, the submitted evidence does not establish that she can be considered a victim under the regulation at 8 C.F.R. § 214.14(a)(14). 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.

#### Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of a qualifying crime, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, we shall not further address this issue.

#### *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.