



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **DEC 19 2014**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE:

PETITIONER: [REDACTED]

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:

SELF-REPRESENTED

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, determining that the petitioner had not established that she was a victim of qualifying criminal activity or that she suffered substantial physical or mental abuse as a result of having been a victim of such activity. On appeal, the petitioner submits a brief supporting statement and a letter from a law enforcement official at the certifying agency.

*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; felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

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.

\* \* \*

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. . . ;
- (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. . . ;
- (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . ; and
- (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 entered the United States in 1996 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 Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on February 25, 2013. On November 19, 2013, the director issued a Request for Evidence (RFE), requesting, among other things, the petitioner's personal statement; evidence that the agency and the individual who executed the Form I-918 Supplement B qualify as a certifying agency and a certifying official respectively; and evidence that the petitioner is a victim of qualifying criminal activity, has suffered substantial physical or mental abuse resulting from the qualifying criminal activity, possesses helpful information of the qualifying criminal activity, and is, was, or is likely to be helpful in the investigation or prosecution of the criminal activity. The petitioner responded to the RFE by submitting an updated Form I-918 Supplement B, her personal statement, and other evidence. The director found the petitioner's response insufficient to establish the petitioner's eligibility and denied the petition accordingly on March 10, 2014. The petitioner timely appealed the denial of the Form I-918 U petition.

*Qualifying Criminal Activity*

The petitioner, in her personal statement, stated that on January 16, 2009, she attended a wake at her parents' home for her younger brother, who had died as a result of being shot by members of a gang two days earlier. She discussed hearing people screaming during the wake to get down because someone was shooting. The police were called, and the petitioner provided information to the police for her mother. The petitioner stated that she and her parents were traumatized by the death of her brother and this incident, and that her mother in particular suffered, succumbing to a heart attack a few years later. She indicated that her brother's killer and the shooter at the wake were quickly identified.

The Form I-918 Supplement B that the petitioner submitted was signed October 10, 2012 by [redacted] Victim Witness Program Supervisor, [redacted] District Attorney's Office, [redacted] California. A later updated one, dated February 6, 2014, was signed by [redacted] Victim Witness Program Director with the [redacted] District Attorney's Office (certifying official). Ms. [redacted] indicated at Part 3.1 of the updated Form I-918 Supplement B that the petitioner was the victim of felonious assault and attempt to commit any of the named crimes committed on January

14, 2009 and January 16, 2009. In Part 3.3, the certifying official cited sections 664 and 187(a) of the California Penal Code (CPC), which relates to the offense of attempted murder, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official stated that while a vigil was being held at the petitioner's home for the petitioner's brother who had been murdered, gang members approached the home and started shooting at people gathered for the vigil. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated that the petitioner suffered emotional trauma, leaving her fearful for her life of further retaliation during the pendency of the prosecution of the case.

### *Analysis*

We conduct appellate review on a *de novo* basis. Upon review, we find no error as to the director's decision to deny the petition based on the stated grounds.

The petitioner has failed to establish that she is a victim of qualifying criminal activity. Pursuant to the regulation at 8 C.F.R. § 214.14(a)(14), a "victim of qualifying criminal activity" is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. 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). The record here indicates that the direct victim of the criminal activity on January 14, 2009 was the petitioner's now deceased minor brother. Although the petitioner is a sibling of the direct victim, who was under 21 years of age at the time of the criminal activity and is deceased as a result of such activity, the petitioner does not qualify based on her familial relationship to him because she was not unmarried and under 18 years of age as required by regulation. *Id.* Further, there is no evidence that the petitioner was present at the time or the scene of the commission of his murder. While we empathize with the petitioner's loss, the record here is insufficient to demonstrate that she qualifies as a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14)(i), based on her status as the direct victim's sister.

On appeal, the petitioner contends that she was a victim of attempted assault on January 16, 2009 during her brother's wake on her parents' property. However, the record, which includes several police reports, shows that another individual, A-C-<sup>1</sup>, was shot by a gang member and was the direct victim of felony assault on that occasion. The petitioner does not assert, and nothing in the record indicates, that she qualifies as the indirect victim of criminal activity under 8 C.F.R. § 214.14(a)(14)(i) based on her relationship to A-C-. Additionally, in her personal statement, the petitioner stated that during her brother's wake at her parents' home, she heard others screaming that there was a shooting. However, there is no indication in the record that the petitioner was present outside where the shooting took place or that she heard or witnessed the shooting. Moreover, although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of felonious assault, none of the accompanying police reports included in the record reference the petitioner as a victim of, or witness to, the criminal activity. Accordingly, upon review

<sup>1</sup> Name withheld to protect the individual's identity.

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*NON-PRECEDENT DECISION*

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of the record, we find that the petitioner failed to demonstrate that she was directly and proximately harmed as a result of the commission of qualifying criminal activity, or that she was an indirect victim of such activity. Consequently, she has not established that she is a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14).

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also necessarily failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

*Conclusion*

The petitioner has failed to demonstrate that she was the direct or indirect victim of qualifying criminal activity. Consequently, she is also unable to satisfy any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act, and is therefore statutorily ineligible for U nonimmigrant status.

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.