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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: FEB 11 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:
[REDACTED]

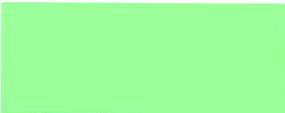
INSTRUCTIONS:

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 (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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 finding that the petitioner failed to establish that he was the victim of qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of his victimization, or that he possesses information about and was helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a brief.

Applicable Law

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

(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: . . . manslaughter; murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification at 8 C.F.R. section 214.14(a) provide for certain definitions, and state, in pertinent part:



(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.

* * *

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. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(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. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4); *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who last entered the United States in October, 2003, without inspection, admission or parole. On June 8, 2003, the petitioner's adult brother was murdered in California. On June 15, 2012, the petitioner filed the instant Form I-918 U petition. On August 2, 2012, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On May 6, 2013, after considering the evidence of record, including counsel's response to the RFE, the director denied the 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.

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of his brother's murder. When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] Director of the [REDACTED] for the Los Angeles, California District Attorney's Office (certifying official). At Part 3.1, the certifying official identified the crime as "other: relative of victim" and did not list a statutory citation for any crime at Part 3.3. At Part 3.5, the certifying official described the involvement of the petitioner in the criminal activity being investigated or prosecuted as being the brother of the deceased. The petitioner also submitted a personal statement in which he stated that he went to the police to report his brother missing when his brother did not return his calls. The next day the police informed him that they had found his brother's body. The petitioner, his father, and his wife went to the morgue to identify the body, but the petitioner did not go inside. The petitioner stated that he later accompanied his brother's body back to Mexico for his burial, and that he testified in the trial against the men who committed the murder.

While it is clear that the petitioner has been affected by his brother's death, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). In cases where the direct victim was murdered, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried siblings of victims under 21 years of age. 8 C.F.R. § 214.14(a)(14)(i). In this case, the petitioner's brother was over the age of 21 years and the petitioner was over 18 years old and married at the time of filing, so he would not qualify as an indirect victim of the criminal activity under the regulations. *See id.* Furthermore, the certifying

official did not certify that the petitioner was the victim of any qualifying crime that was investigated or prosecuted, but instead noted that the petitioner was the brother of the deceased.

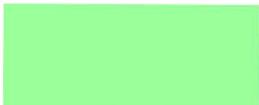
The director noted that the petitioner did not qualify as a direct victim because he had not established that he had suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. On appeal, counsel asserts that the petitioner is suffering from Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) as a result of, or “by reason of” the murder of his brother.¹ However, the petitioner was not the direct victim of the murder as he did not suffer the direct and proximate harm of the murder as he was not the individual who was killed. 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. In assessing harm to the victim, the AG Guidelines further explain that: “In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was *actually present during a crime of violence*.” *Id.* at 9 (emphasis added). The evidence shows that the petitioner was not present at the time of the murder and only learned of it later from the police. Although the record shows that the petitioner has been greatly affected by the murder of his brother, there is no support for the petitioner’s claim that he was directly or proximately harmed by the criminal activity perpetrated against his brother. The petitioner has, therefore, failed to show that he is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

As the petitioner did not establish that he met the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14), he has also failed to establish that he meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.² *See also U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). The petitioner is consequently ineligible for U nonimmigrant classification and his petition must remain denied.

Additionally, the record shows, and the petitioner admits, that he entered the United States without inspection, admission, or parole, and he is therefore inadmissible to the United States under section

¹ In his appeal brief, counsel asserts that under section 101(a)(15)(U) of the Act and 8 C.F.R. section 214.14(b) one of the criteria for U nonimmigrant status is that “the alien is a direct and proximate victim or witness of qualifying criminal activity.” Brief at 4. However, neither the Act nor the regulations include a “witness” of qualifying criminal activity in the definition of a victim for U nonimmigrant status.

² In his appeal brief, counsel states that USCIS did not contest that the petitioner possessed information regarding qualifying criminal activity and that he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. Brief at 6-7. However, the director’s decision states that the petitioner has not established that he possessed information or was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. *See* USCIS decision dated May 6, 2013 at 4-5.



NON-PRECEDENT DECISION

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212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. As the petitioner's Form I-192 was denied, he has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3).

Conclusion

The petitioner has failed to establish that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act and described in 8 C.F.R. § 214.14(a)(14). The petitioner's failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Furthermore, the petitioner is inadmissible to the United States and his ground of inadmissibility has not been waived. The petitioner is consequently ineligible for U nonimmigrant classification and his petition must remain denied.

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.