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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 15 2014 Office: VERMONT SERVICE CENTER

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 (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 for failure to establish that the petitioner was the victim of qualifying criminal activity and suffered substantial abuse as a result of her victimization. On appeal, counsel submits another personal statement from the petitioner.

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 --
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> > (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. . . .

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 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 1990. On June 5, 2011, the petitioner's son was murdered when he was 26 years old. On December 13, 2011, the petitioner filed the instant Form I-918 U petition. On September 24, 2012, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On April 11, 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 her son's murder, a qualifying crime. When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by of the California Sheriff's Department (certifying official). At Part 3.1, the certifying official identified the crime as murder and listed the statutory citation for the crime at Part 3.3 as California Penal Code § 187 (murder). At Part 3.5, the certifying official described the involvement of the petitioner in the criminal activity being investigated or prosecuted as being the mother of the victim. The petitioner also submitted a personal statement in which she explained that she found out her son had been murdered when detectives came to her house the following day.

While it is clear that the petitioner has been deeply affected by her son's death, she does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). On appeal, counsel asserts that the petitioner is a victim of her son's murder because she has suffered greatly as a result of the crime. However, she was not the direct victim of the murder as she was not the individual who was killed.

Furthermore, in cases where the direct victim was murdered, the regulation only includes as indirect victims the spouse and children of murder 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 son was over the age of 21 years, so she would not qualify as an indirect victim of the criminal activity under the regulations. *See id.*

The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of murder, the evidence in the record does not demonstrate that the petitioner's murder was investigated or prosecuted, but rather that the petitioner's adult son was murdered. The petitioner has, therefore, failed to show that she is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

In addition, because the petitioner has not established that she was the victim of qualifying criminal activity, she has also failed to demonstrate that she suffered substantial physical or mental abuse as a result of such victimization, as required by section 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has 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 and described in 8 C.F.R. § 214.14(a)(14). The petitioner is consequently ineligible for U nonimmigrant classification and her 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.