(b)(6)

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: JUN 16 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 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 did not establish that she was the indirect victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, counsel submits a brief, additional evidence, and 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 --
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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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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.

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;

(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. . . .

(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 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 Colombia who entered the United States on September 5, 2010 on a B-2 nonimmigrant visa with authorization to remain until March 4, 2011. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on June 14, 2012. The director denied the petition because the petitioner did not establish that she was the indirect victim of qualifying criminal activity. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the petitioner is a bystander victim of her son's murder because she has suffered an unusually direct psychological injury as a result of the crime. In addition, counsel claims that the petitioner has satisfied all other eligibility criteria for U classification.

Claimed Criminal Activity

In her statements, the petitioner recounted that while in Colombia, in the early morning hours of April 19, 2009, she received a phone call from her son's aunt who indicated that her son had been injured while in the United States. Approximately three hours later, she received another phone call from her son's aunt who indicated that her son had died. On September 5, 2010, she came to the United States to help the prosecutors with their criminal case by representing her son in court.

The Form I-918 Supplement B that the petitioner submitted was signed by Senior Assistant Prosecutor New Jersey, Prosecutor's Office (certifying official), on December 19, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as murder that occurred on April 19, 2009. In Part 3.3, the certifying official refers to the New Jersey Code of Criminal Justice § 2C:11-4a (aggravated manslaughter) 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 is the mother of a homicide victim, who "was an innocent bystander when he was shot and killed during a bar fight. He did nothing wrong." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official did not provide any information regarding any injuries, physical or mental, to the petitioner, but indicated that

the petitioner's child was "shot one time in the abdomen. . . [and] died of his internal injuries at a local hospital."

Analysis

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 will be considered victims of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14)(i). On April 19, 2009, the date the petitioner's son was murdered, he was 23 years of age. Therefore, the petitioner is not an indirect victim of qualifying criminal activity based solely on her status as the deceased's parent.

Counsel claims that the petitioner is a bystander victim of the murder of her son. The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by 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). In her appeal brief, counsel explains that the petitioner is a bystander victim because she suffered an unusually direct injury as a result of a qualifying crime. She states that the petitioner has been diagnosed with major depressive disorder, severe, and although the petitioner was not the "direct target" of the murder of her son, she has suffered an "unusually direct injury." In a psychiatric evaluation dated March 25, 2013, Dr. [redacted] diagnosed the petitioner with major depressive disorder, severe, and recommended psychotherapy and antidepressant medication. In his statement dated September 26, 2013, [redacted] a licensed social worker, indicated that he was treating the petitioner with psychotherapy, with the focus of the treatment on the petitioner's grief from losing her son and learning to cope with her depression and anxiety. The petitioner states that after her son was murdered, her "life lost all shine." However, after moving to the United States to be spiritually closer to her son and with the help of friends, she has "managed to move ahead."

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 in Colombia when her son was shot and later died from his injuries, and did not witness any aspect of the commission of the qualifying criminal activity. We recognize that the petitioner has been diagnosed with depression and

anxiety resulting from the loss of her son, and is seeking therapy to help her cope with and heal from her son's murder; 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) as a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against her son. 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.[1]

Possession of Information Concerning Qualifying Criminal Activity

To be eligible for U nonimmigrant classification, a petitioner must establish that she possesses information concerning the qualifying criminal activity upon which her petition is based. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. § 214.14(b)(2). On the Form I-918 Supplement B, the certifying official indicated at Part 4.1 that the petitioner did not possess information concerning the criminal activity, clarifying that the petitioner provided "necessary background information about her son." There is no indication in the record that the petitioner possessed any information regarding the criminal activity that resulted in her son's death. Accordingly, the petitioner has not established that she possesses information concerning the qualifying crime that was certified, as required by subsection 101(a)(15)(U)(i)(II) of the Act, and we find an additional basis for denial of the petition.[2]

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). The petitioner has failed to establish that she was the victim of a qualifying crime. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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

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[1] The certifying official also did not indicate that the petitioner suffered any physical or mental injury at Part 3.6 of the Form I-918 Supplement B.

[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).