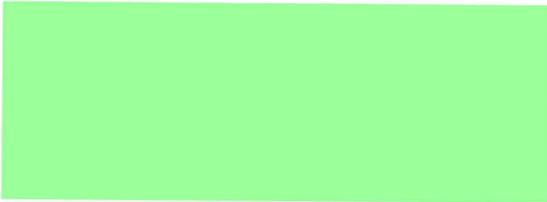




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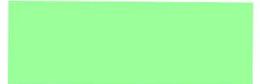


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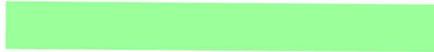
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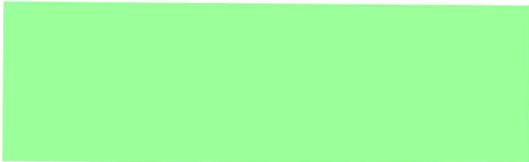
PETITIONER:



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. 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 he was the victim of qualifying criminal activity and he consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief 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 --

- (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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as

defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

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.

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 Mexico who entered the United States on August 28, 1989 without inspection, admission or parole. 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 September 7, 2011. On April 19, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime, that he was helpful in the investigation of the criminal activity, that he possessed information concerning the criminal activity, that he suffered substantial physical and mental abuse, and a copy of his son's birth certificate. Counsel responded to the RFE with a

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

second Form I-918 Supplement B, and additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that the director misinterpreted the facts and legal requirements for U visas. He claims that the petitioner is an indirect victim of a qualifying crime and continues to provide assistance to the Federal Bureau of Investigation (FBI).

Claimed Criminal Activity

In his statements, the petitioner recounted that on May 7, 2011, his son left work and never returned home. On May 8, 2011, the petitioner filed a missing person report with the police department. On the same day, his son's vehicle was found behind a house, and the police arrested a suspect charging him with murder. On May 15, 2011, the petitioner received a ransom call requesting \$250 to return his son. He paid \$250 but his son was not returned. The petitioner received three more ransom calls and after he paid the amounts requested, his son was not returned. The petitioner called the police to report the ransom calls and the FBI got involved in the case. It is unknown what happened to the petitioner's son but his body was never recovered.

The first Form I-918 Supplement B that the petitioner submitted was signed by Investigator [REDACTED] of the [REDACTED] Sheriff's Office, on August 4, 2011. Investigator [REDACTED] lists the criminal activity of which the petitioner was a victim at Part 3.1 as extortion and murder. In Part 3.3, Investigator [REDACTED] refers to capital murder as the criminal activity that was investigated, without providing a statutory citation. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, Investigator [REDACTED] indicated that the petitioner's "son was murdered on May 7, 2011. Suspect was in possession of victim's vehicle which contained a large amount of blood." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, Investigator [REDACTED] stated that the suspect indicated that the petitioner's son was not bleeding badly but that he had killed the petitioner's son. Investigator [REDACTED] did not provide any information regarding any injuries, physical or mental, to the petitioner.

The second Form I-918 Supplement B that the petitioner submitted was signed by Special Agent [REDACTED] Field Division (certifying official), on June 6, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as murder and carjacking. In Part 3.3, the certifying official refers to Title 18 United States Code (U.S.C.) §§ 2119 and 1951, carjacking and interference with commerce by threats or violence, respectively, as the criminal activities that were 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 on May 7, 2011, the "petitioner's son was carjacked and abducted" and the petitioner is "the victim [sic] of an extortion scheme, having paid ransom demands for the safe return of his son." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "has suffered no known physical injury," but has suffered "financial distress" because the ransom payments exceeded \$20,000.

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 May 7, 2011, the date that the murder allegedly occurred, the petitioner's son was 21 years of age. Therefore, the petitioner is not an indirect victim of qualifying criminal activity based solely on his status as the deceased's parent.

In the first Form I-918 Supplement B, [REDACTED] indicated that the petitioner was the victim of extortion and murder. In the second, updated Form I-918 Supplement B, the certifying official indicated that the petitioner was the victim of murder and carjacking. As noted above, the petitioner was not the indirect victim of his son's murder as his son was over 21 years of age when he disappeared. Further, as counsel notes in his brief, the only direct victim of murder is the individual who was murdered.

Carjacking is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the carjacking offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question. In his appeal brief, counsel claims that carjacking is similar to abduction, unlawful criminal restraint, or false imprisonment, but provides no statutory analysis of the nature and elements of carjacking to show that it is substantially similar to any qualifying crime. The petitioner has not demonstrated that the nature and elements of carjacking are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including abduction, unlawful criminal restraint, or false imprisonment.

Counsel also claims that the petitioner is a bystander victim of the carjacking and murder of his 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.

Counsel claims that the petitioner is a bystander victim because he has suffered an unusually direct injury as a result of a qualifying crime. He states the petitioner is suffering from post-traumatic stress disorder (PTSD). In addition, he asserts that there is no requirement that the petitioner witness the murder of his son, only that he possesses information regarding the crime. Counsel provides an example of a case where witnesses to a person being shot in a restaurant were considered bystander victims. However, as noted by counsel, the bystander victims actually witnessed the shooting. In this case, the petitioner was not present during the kidnapping and alleged murder of his son.

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, there is no evidence in the record that the petitioner was the victim of or witnessed the crime[s] committed against his son. The evidence also does not establish that he otherwise suffered an unusually direct injury resulting from the carjacking and alleged murder of his son. Although the new Form I-918 Supplement B identifies the petitioner as a victim, the certifying official did not indicate that the petitioner suffered any physical injury. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

In addition, counsel asserts that the petitioner is a victim of extortion. In the second Form I-918 Supplement B, the certifying official indicated that they were investigating a violation of Title 18 U.S.C. § 1951, interference with commerce by threats or violence, which is the federal extortion statute. In addition, the certifying official stated the petitioner was the victim of an extortion scheme and he suffered “financial distress” because the ransom payments exceeded \$20,000. 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. Here, the Form I-918 Supplement B and supporting evidence establish that the petitioner was the victim of extortion, and the relevant evidence shows that he was directly and proximately harmed by the qualifying crime. Accordingly, he has established the requisite victimization.

As noted above, counsel has not established that carjacking is substantially similar to any qualifying crime; however, the evidence in the record establishes that the crime of extortion was investigated. Counsel has established that the petitioner was a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act.

In addition, as the petitioner has established that he was the victim of qualifying criminal activity, he has also established that he possesses information concerning such activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act, and that he has been helpful in the investigation of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

Substantial Physical or Mental Abuse

The petitioner has failed to establish that he 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. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

The evidence shows that the petitioner's son went missing after leaving work. The petitioner received several ransom calls requesting money for his son's return, and after paying the ransoms, his son was not returned to him. It is unknown what happened to the petitioner's son, and his body has not been recovered. According to the new Form I-918 Supplement B, the petitioner "has suffered no known physical injury." In her August 22, 2011 evaluation, licensed social worker [REDACTED] stated the petitioner is suffering psychologically, emotionally, and physically. She reported that the petitioner's physical ailments include headaches, pain in his stomach and chest, weight loss, and insomnia. In her updated evaluation, Ms. [REDACTED] states the petitioner has constant headaches, insomnia, weight loss, and trouble concentrating. She notes that the petitioner is constantly worried about his son and "[h]is life has been torn apart as a result of this." The petitioner states he has nightmares and is worried that someone will harm him and his family. Ms. [REDACTED] notes that the petitioner fits nearly all the criteria for PTSD, and indicates that he would benefit from continued counseling. The petitioner claims that the emotional pain he is suffering cannot be cured by therapy.

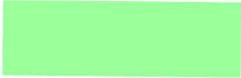
Counsel asserts that all credible evidence relating to the Form I-918 U petition, including the two psychological evaluations, must be reviewed. Counsel is correct that all credible evidence relevant to the petition must be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4). However, this evidentiary standard is not equivalent to the petitioner's burden of proof. *See* 8 C.F.R. § 214.14(c)(4). Accordingly, the mere submission of evidence that is relevant and credible may not always suffice to meet the petitioner's burden of proof. Here, the petitioner has submitted relevant and credible evidence regarding his mental health; however, the evidence in the record fails to establish that he has suffered substantial physical or mental abuse as a result of any criminal activity. The Form I-918 Supplement B does not indicate that there was any physical injury to the petitioner as a result of his victimization. Although Ms. [REDACTED] notes that the petitioner fits the criteria for PTSD, she does not probatively discuss any permanent or serious harm the incident caused to the petitioner's appearance, health, or physical or mental soundness. While we do not minimize what the petitioner experienced as a result of his son's disappearance, the overall evidence does not establish that he has suffered substantial physical or mental abuse as a result of his victimization. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Counsel further contends that the intent of Congress when creating the U visa "was to protect victims of certain crimes who have gathered the courage to come forward, report the crime, and assist in its investigation and prosecution." However, the petitioner must still meet the statutory and regulatory requirements, as 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).

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).

(b)(6)



NON-PRECEDENT DECISION

Page 8

The petitioner has failed to establish that he suffered substantial physical or mental abuse as a result of having been 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.