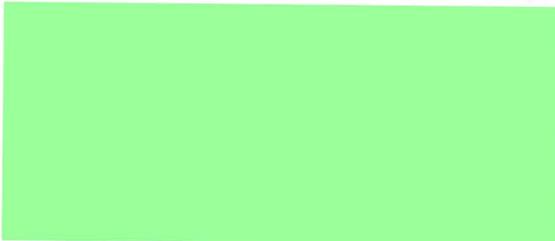


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

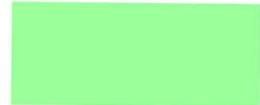
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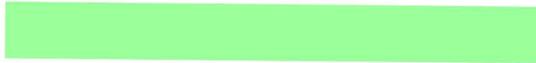
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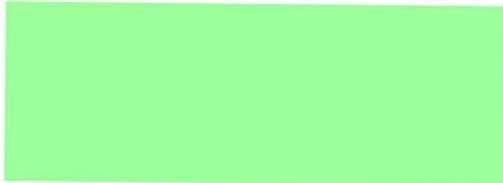
PETITIONER:



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 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 he was a victim of qualifying criminal activity or that he had suffered substantial physical or mental abuse as a result of being a victim 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 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 . . .; kidnapping; . . . 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.

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 August 1993 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 I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), on January 17, 2012. On November 27, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he suffered substantial physical and mental abuse. In addition, the director requested the petitioner to submit his passport. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner was a bystander witness to a brutal attack and sexual assault committed against his neighbor. She explains that the petitioner has suffered an unusually direct injury by witnessing this crime as evidenced by his diagnosis of post-traumatic stress disorder (PTSD).

Claimed Criminal Activity

In his declaration, the petitioner recounted that on June 3, 2011, he heard someone "frantically" knocking on his door. When he opened the door, his neighbor, looking "completely panicked," asked for his help because his eight-month pregnant domestic partner was being attacked. By the time the petitioner ran out of his house, the suspect had been caught and was being held down by a man. The petitioner called 911 and helped hold down the suspect. While he was restraining the suspect, the suspect's two brothers threatened the petitioner and the other man. The other man who was helping to hold down the suspect got scared and left. The petitioner continued to hold down the suspect until the police arrived. When the police arrived, the petitioner gave his statement and the suspect was arrested. After he gave his statement, he started walking home and noticed the suspect's brothers following him. They threatened to kill him and his wife, and he jumped over a fence to get away from them.

The Form I-918 Supplement B that the petitioner submitted was signed by Deputy District Attorney [REDACTED] California, District Attorney's Office (certifying official), on November 8, 2011. The certifying official listed the criminal activities of which the petitioner was a victim at Part 3.1 as kidnapping and rape. In Part 3.3, the certifying official refers to California Penal Code §§ 209(b)(1) (kidnap to commit rape), 220 (assault to commit rape), and 289(a)(1) (sexual penetration with object) 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, she indicated that petitioner "received a call saying his neighbor," who was eight months pregnant, "was being attacked and raped. He ran outside and assisted in apprehending the perpetrator until law enforcement arrived." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "suffered severe emotional harm as a result of being a bystander of this attack." According to a responding police officer in a police report submitted by the petitioner:

I spoke to [the petitioner] who [is] a neighbor of the victim. [The petitioner] told me that the victim's boyfriend . . . told him that the victim called him on her cell phone crying. She told [her boyfriend] that she had been attacked and that the suspect ran away. [The petitioner and the victim's boyfriend] went out to [REDACTED] and saw the [perpetrator] running towards them with several other people running behind him. [The petitioner] said he helped bring [the perpetrator] down and detained him until police arrived. . . .

In the police report, the petitioner was listed as "Other Person Involved" and not as "Witnesses."

Analysis

Victim of Qualifying Criminal Activity

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 asserts that the petitioner was a bystander victim of the kidnapping and rape of his neighbor, and he is suffering from PTSD as a result of the incident. She claims that the petitioner "came upon the scene while it was still ongoing, as the perpetrator was attempting to flee," and he held the perpetrator down until the police arrived. The petitioner

states he suffered “severe emotional harm as a result of this crime, testifying in court, and being one of the primary people to help [his] neighbor through her difficult recovery after this crime.” In her statement, therapist [REDACTED] reports that according to the petitioner, while he was restraining the perpetrator, he “felt his life was at risk, experiencing intense fear, horror and helplessness” because the perpetrator’s brothers were threatening him. She indicates that the petitioner “re-experiences the traumatic event daily”; he has “difficulty sleeping, irritability, difficulty concentrating, and hyper vigilance,” and she diagnosed him with PTSD.

The evidence shows that the petitioner helped detain the perpetrator after the perpetrator fled the scene of the crime, but that the petitioner was not present during the commission of the criminal activity. 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 petitioner makes no claim to having witnessed the assault on his neighbor and the police report does not list him as a witness, only as “other person involved.” We recognize the petitioner’s efforts in assisting with the perpetrator’s apprehension as well as his helpfulness to law enforcement authorities in the investigation and prosecution of the certified criminal activity; however, the evidence does not establish that the petitioner was a bystander who suffered an unusually direct injury as a result of witnessing the crimes committed against his neighbor. 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.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of a qualifying crime, he has also 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.

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 he 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.