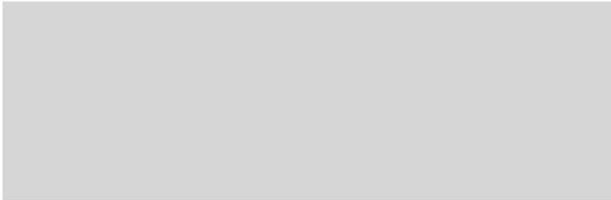


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

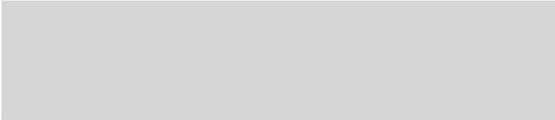


U.S. Citizenship
and Immigration
Services

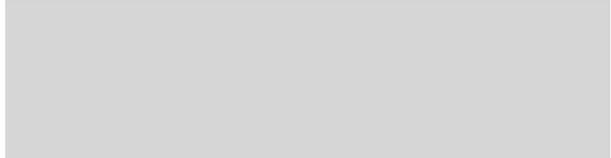
(b)(6)



Date: **APR 01 2015** 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)

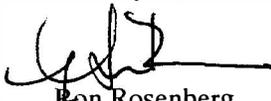
ON BEHALF OF PETITIONER:


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 now 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 victim of qualifying criminal activity. On appeal, counsel submits a brief, and copies of 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: . . . felonious assault; manslaughter; 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.

The AAO conducts appellate review on a de novo basis. 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; *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 claims to have last entered the United States on May 1, 2000, 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 Form I-918 U Nonimmigrant Status Certification (Form I-918 Supplement B) on June 3, 2013. On March 18, 2014, the director issued a Request for Evidence (RFE) to obtain, in part, evidence relating to the petitioner's victimization. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner states that she is a victim of qualifying criminal activity because she suffered direct and proximate harm as a result of her niece's murder and she provided information to law enforcement officials in their investigation and prosecution of the crime.

Analysis

The relevant evidence submitted by the petitioner below and on appeal fails to establish her victimization under the relevant definition at 8 C.F.R. § 214.14(a)(14).

While filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] Detective Sergeant, [REDACTED] Nebraska Police Department (certifying official), on February 21, 2013 indicating that the petitioner's niece was murdered on July 13, 2004. The certifying official also indicated at 3.6 that the petitioner suffered emotional distress and depression for the loss of a close family member.

The petitioner also submitted personal statements in which she recounted that on July 31, 2004, her niece was supposed to be driven to an appointment by her friend [REDACTED]. When [REDACTED] arrived at her niece's home, she called on her niece to come outside as she was waiting but her niece did not respond. [REDACTED] called the petitioner to report that she had been calling on her niece to come out but she had not responded. The petitioner sent her 11-year-old daughter to her niece's house to find out why her niece was not responding to [REDACTED] call. Upon arriving at the house, the petitioner's daughter discovered the door was unlocked and she entered the house. She called on her cousin but she was not responding. She noticed that her cousin's older son was asleep in one room and that her 11-month-old son was crying. The petitioner's daughter went through the house and discovered her cousin's bloodied body in the back room of the house. She ran outside, screaming for [REDACTED] to call an ambulance because her cousin had been badly injured and was bleeding from her neck. [REDACTED] called the paramedics and called the petitioner to come to her niece's house

because something bad may have happened to her niece. As the petitioner arrived, the paramedics and police were at the scene and the police would not allow her to enter her niece's house. The police informed the petitioner that her niece had been murdered and she called other family members to report the incident.

The petitioner claimed that she provided information to law enforcement officials in the investigation and prosecution of the crime. The petitioner stated that she was shocked and traumatized by her niece's death and that she suffered serious emotional and psychological harm as a result. The petitioner also stated that her daughter was severely traumatized by the incident and had to undergo counseling from the psychiatrist at her school. The petitioner stated that while assisting law enforcement officials in the investigation of the murder, she received threatening phone calls at her home, further terrorizing her family. The petitioner indicated that she continues to be traumatized from the experience of her niece's murder and the ensuing threats against her safety resulting from her assistance to law enforcement officials. The petitioner claimed that the extreme emotional and mental anguish she had suffered as a result of her niece's murder and the stress and fear of threats of further attack against her and her family caused her serious health problems in the form of sleep deprivation and depression. She indicated that her mental health problem is exacerbated by the extreme emotional and psychological distress suffered by her daughter.

In her denial letter, the director cited the regulatory definition of victim at 8 C.F.R. § 214.14(a)(14)(i), and stated that the petitioner was not a victim because she was the aunt of the deceased. On appeal, the petitioner asserts that she qualifies as an indirect victim of her niece's murder because she was very close to her niece and she suffered direct and proximate harm as a result of her murder. As an aunt, the petitioner cannot qualify as an indirect victim based solely on her familial relationship to the victim, because only the spouses and children of victims at least 21 years of age may qualify when the victim was murdered. See 8 C.F.R. § 214.14(a)(14)(i).

On appeal, the petitioner states that under the Attorney General Guidelines for Victim and Witness Assistance, she is a "general victim" of qualifying criminal activity because she suffered direct and proximate harm as a result of her niece's murder and she provided information to law enforcement officials in the investigation and prosecution of the murder. 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). There may be circumstances where a bystander to a qualifying crime may suffer "unusually direct injuries" as a result of witnessing a violent crime; however, the petitioner in this case was not present during the commission of the crime and became aware of the crime only after receiving [redacted] phone call.

Although the evidence of record shows that the petitioner has been greatly affected by the murder of her niece,

there is no support for the petitioner's claim that she was directly or proximately harmed as a bystander to the criminal activity perpetrated against her niece. *See* Preamble to the Interim Rule, 72 Fed. Reg. 53016-17. We are sympathetic to the petitioner's loss of a close family member and its impact on her family; however, the facts in this matter do not demonstrate the petitioner's victimization under the applicable regulation at 8 C.F.R. § 214.14(a)(14). 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.

Conclusion

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she suffered any resultant substantial physical or mental abuse as required under subsection 101(a)(15)(U)(i)(I) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act 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 and the appeal must be dismissed.

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