



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 30 2015**

FILE #:

PETITION RECEIPT #:

IN RE: Petitioner:
 Beneficiary:

PETITION: Petition for Qualifying Family Member of U-1 Recipient Pursuant to Section
 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification of the beneficiary under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 nonimmigrant.

The director denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) determining that the beneficiary was not eligible for classification as a U nonimmigrant because he was culpable for the criminal activity in which the petitioner was a victim and which established the petitioner's eligibility for U nonimmigrant status. On appeal, the petitioner submits a statement; counsel stated that he would submit a brief within 30 days of filing the appeal, but to date, nothing further has been received.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. For an alien victim of certain criminal activity who is 21 years of age or older, section 101(a)(15)(U)(ii)(II) of the Act defines a qualifying family member as the victim's spouse and children. *See also* section 214(p)(7) of the Act.

Section 204(a)(1)(L) of the Act states:

Notwithstanding the previous provisions of this paragraph, an individual who . . . had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child) which established the individual's (or individual's child) eligibility . . . for such nonimmigrant status.

The regulation further states that "[a] qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status." 8 C.F.R. § 214.14(f)(1).

Facts and Procedural History

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on August 20, 2013. The petitioner concurrently filed a Form I-918 Supplement A on behalf of the beneficiary. The police report in the record indicates that the petitioner was stabbed by his son, the beneficiary, in their home and that the

beneficiary was arrested for assault with a deadly weapon as a result. The director found the petitioner eligible for U-1 classification based on this felonious assault. On May 29, 2014, the director denied the Form I-918 Supplement A, finding that the beneficiary was not eligible for U-3 status because he was culpable for the criminal activity of which the petitioner was a victim.

Analysis

The AAO conducts appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny U-3 nonimmigrant status to the beneficiary.

The Incident Report in the record from the [REDACTED], California Police Department states that officers were called out to the petitioner's home on May 27, 2011 on a domestic disturbance call. The report further states that the petitioner's wife was the one who called police about her son who had stabbed his father at the back of the head. The petitioner was taken to the hospital with a stab wound between two vertebrae in his neck and with blood and air in his cranial cavity. The police seized multiple weapons from the beneficiary's bedroom and recovered the knife used in the incident. The beneficiary was arrested when he returned to the house later that night. In a declaration dated August 13, 2013, the beneficiary stated that he stabbed his father in the midst of a schizophrenic episode. Until the qualifying crime occurred, the beneficiary's mental illness had not been diagnosed. As a result of committing the qualifying crime, the beneficiary spent time in a psychiatric facility, and his mental illness is now managed with medication and therapy.

According to the regulation at 8 C.F.R. § 214.14(f)(1): "[a] qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U-2, U-3, U-4, or U-5 non-immigrant status." On appeal, the petitioner states that as the crime charged was not domestic violence, but instead was felonious assault, the bar for derivative status for family members who commit the criminal activity in a "family violence" context would not apply to the beneficiary. The petitioner states that the regulation should be restricted to apply to a spouse or parent who harms his spouse or child. The petitioner asserts that if any parent-child crime were termed "family violence," the language would be rendered superfluous, a statutory construction that should be avoided. In addition, the petitioner notes that the beneficiary was suffering from an undiagnosed mental illness at the time he committed the criminal act.

The regulation at 8 C.F.R. § 214.14(f)(1) specifies that a perpetrator of "family violence" is ineligible for derivative status under section 101(a)(15)(U)(ii)(II) of the Act. The term "family violence" is discussed in the Preamble to the U nonimmigrant rule, and provides that any family member who commits an act of violence against the U-1 petitioner would be ineligible for U derivative nonimmigrant status. The petitioner has presented no legal authority for his assertion that the regulation at 8 C.F.R. § 214.14(f)(1) is limited to only spouses who commit domestic violence against their partners and parents who commit child abuse. See 72 Fed. Reg. 53014, 53025 (Sept. 17, 2007). Here, the petitioner's eligibility for U-1 status resulted from a crime of violence, felony assault, perpetrated by the beneficiary, who is his son.

Although we recognize that the beneficiary was suffering from an undiagnosed mental health issue when he committed the crime, we have no discretion to waive the application of section 204(a)(1)(L) of the Act as explicated in the regulation at 8 C.F.R. § 214.14(f)(1) when the qualifying criminal activity occurred in the context of an incidence of family violence regardless of whether the perpetrator was the victim's spouse, parent, child, or sibling under the age of 18. Consequently, as the beneficiary is culpable of the qualifying criminal activity which the certifying agency investigated and prosecuted, he cannot be granted U-3 nonimmigrant status. Section 204(a)(1)(L) of the Act; 8 C.F.R. § 214.14(f)(1). Accordingly, we will not disturb the director's decision.

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). Here, that burden has not been met.

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