

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 30 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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 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 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 under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.¹

The director denied the petition for failure to establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submits a statement.

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; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

¹ The petitioner filed a second Form I-918 Petition for U Nonimmigrant Status (Form I0918 U petition) on August 6, 2014 based on a claimed felonious assault. That petition is currently pending adjudication.

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The regulations governing the U nonimmigrant classification provide for certain definitions, and state, in pertinent part:

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

* * *

(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, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

* * *

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). We conduct appellate review on a de novo basis. 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. He stated that he last entered the United States on August 13, 2007 without inspection, admittance, or parole. In [REDACTED] 2009, when the petitioner was 18 and his sister was 20, the petitioner's sister left a nightclub and was never seen again. She was last seen entering a car with a man; that car was later found with a large amount of human blood on the front seat. The medical examiner found that the blood belonged to the petitioner's sister and ruled that the quantity of blood indicated that she was deceased although her body has never been recovered. The petitioner filed the instant Form I-918 U petition on August 6, 2012. On September 5, 2013, the director issued a Request for Evidence (RFE) to obtain, in part, evidence relating to the petitioner's victimization and resultant substantial physical or mental abuse. 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.

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The Petitioner is Not a Victim of His Sister's Murder

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of the qualifying crime committed against his older sister.

When filing the U nonimmigrant petition, the petitioner submitted a law enforcement certification (Form I-918 Supplement B) signed by [REDACTED] Deputy Chief of Police for the [REDACTED] Tennessee Police Department. At Part 3.5, Mr. [REDACTED] indicated that the petitioner's sister is a missing person believed to be deceased, noting that the petitioner is his sister's next of kin so that the police department views him as an "indirect victim" of the crime. Mr. [REDACTED] noted further that the petitioner originally notified the police of his sister's disappearance and that the petitioner was actively involved in searching for witnesses and additional information to help with the investigation. At Part 3.5, which asks the certifying official to provide any known or documented injuries, Mr. [REDACTED] stated that the section did not apply to the petitioner.

In his denial letter, the director stated that the petitioner did not meet the regulatory definition of a victim because he was over the age of 18 when his sister (under age 21 at the time) went missing. See 8 C.F.R. § 214.14(a)(14)(i). On appeal, the petitioner agrees that he is not an indirect victim under the regulation, but states that the director erred in not considering whether he was a general or bystander victim because he suffered great emotional and mental harm as a result of his sister's disappearance and he has been helpful to the police investigation. The petitioner states that he was very close with his sister before her disappearance and he provided witness testimony to the police concerning the events leading up to her disappearance.

The evidence submitted below and on appeal does not support the petitioner's claim that he is a victim of any crime committed against his sister. The record does not show that the petitioner witnessed or was otherwise aware of his sister's disappearance until after it occurred. Although counsel states on appeal that the petitioner was living with his sister before her disappearance, the petitioner's August 2, 2012 statement states that the petitioner's sister had moved out of their shared apartment to live with her boyfriend and then with friends. In his statement, the petitioner stated that he learned his sister had not returned home the night before after talking with one of his sister's roommates the next day.

While it is clear that the petitioner has been affected by his sister's disappearance and presumed murder, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). 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.

We acknowledge the close relationship between the petitioner and his sister but he has made no claim that he witnessed or was present for any crime committed against his sister such that we can consider him a bystander to a crime committed against her.

As the petitioner did not establish that he met the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14), he has also failed to establish that he meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. *See also* U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). The petitioner is consequently ineligible for U nonimmigrant classification and his petition must remain denied.

Conclusion

Although the petitioner was greatly affected by the disappearance and apparent murder of his older sister and has been helpful to the police in investigating the crime, the petitioner has failed to establish that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i) of the Act and described in 8 C.F.R. § 214.14(a)(14). The petitioner’s failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for U nonimmigrant classification and his 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.

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