

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



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 04 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 The director's decision will be withdrawn and the matter returned for entry of a new decision.

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; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; or he was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

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

Murder and attempted murder are listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The eligibility requirements for U nonimmigrant classification are further explained 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. . . ;
- (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. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;
- (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. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

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 Jamaica who entered the United States in July 1991 falsely presenting himself as a U.S. lawful permanent resident. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on May 24, 2013. On the same day, the petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On February 4, 2014, the director issued a

Request for Evidence (RFE) in support of the petitioner's Form I-192. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that as a bystander to the shooting death of his friend and the injury of his brother and another friend, he is a direct victim who suffered emotional distress as a result of the crime.

Claimed Criminal Activity

In his affidavit, the petitioner recounted that on February 13 and 14, [2005], he attended a nightclub with his best friend O-R-¹ and his brother B-D-². He indicated that at the nightclub, a man, later identified as A-T-³, stepped on his toe twice and when O-R- intervened to ask what the problem was, A-T- pushed O-R- and a fight broke out. A-T- then left the nightclub and returned with a gun, opening fire on the petitioner, O-R-, and B-D-. O-R- was killed during the shooting and B-D- was shot in the leg. The petitioner stated that although he was not shot, he felt scared and shocked. The petitioner stated that he served as a key witness for the prosecutor despite hearing that there was a death threat out for him. Another witness for the prosecutor was subsequently killed and the petitioner stated he was also attacked in his home on July 20, 2007, by gunmen who accused him of being an informer.

The Form I-918 Supplement B that the petitioner submitted was signed by Assistant State's Attorney [REDACTED], Connecticut, State Attorney's Office (certifying official), on November 29, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official refers to Connecticut Criminal Law § 53a-54a, murder, and 53a-59(a)(5), assault first degree discharge of firearm. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner "witnessed [A-T- return to the club with the gun in his hand. [The petitioner] was part of the crowd that was fired upon by [A-T-]. [A-T-] was sentenced to 45 yrs (*sic.*) on count one, 15 years on count two and 10 years on count three." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner was part of the crowd that A-T- "sprayed" with gunfire, that as the "gunfire assault occurred, [the petitioner] feared for his life", and that during the same assault, the petitioner's friend was murdered. In Part 4.5 of the form, the certifying official stated that the petitioner was instrumental to the prosecutor's case against A-T-. The certifying official further stated that the petitioner's testimony was critical to the prosecution obtaining a guilty verdict against A-T-.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director's decision to deny the petitioner's Form I-918 U petition.

The petitioner has established that he is a victim of qualifying criminal activity. Pursuant to the regulation at 8 C.F.R. § 214.14(a), a "victim of qualifying criminal activity" is defined as an alien who is directly or

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

proximately harmed by the commission of qualifying criminal activity. The certifying official indicated that the petitioner was present and witnessed the petitioner's friend and brother being attacked and shot by A-T-, and that the petitioner was also a victim of the shooting assault.

The certifying official indicated on the Form I-918 Supplement B that the petitioner was part of the crowd that was shot upon, that he feared for his life, and that his friend O-R- was killed as a result of the shooting. The petitioner stated in his affidavit that his brother was also shot and injured by A-T-. Based on the record, the petitioner has sufficiently demonstrated that he was directly and proximately harmed as a result of the commission of the qualifying crime, and therefore, has established that he is a victim qualifying criminal activity. Accordingly, we withdraw the director's contrary determination.⁴

Admissibility

Although the petitioner has established his statutory eligibility for U nonimmigrant classification, the petition may not be approved because he remains inadmissible to the United States and his waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. *See* 8 C.F.R. § 212.17(b)(3).

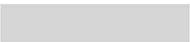
In this case, the petitioner's Form I-192 waiver application was denied, without discussion, on June 30, 2014. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the petitioner's Form I-918 U petition have been overcome, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and his waiver application was denied. Because the sole basis for denial of the petitioner's

⁴ The evidence in the record also establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. The certifying official provided on the Form I-918 Supplement B that the petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States. Our review of the record further reveals that the petitioner suffered substantial abuse as the result of his involvement in the qualifying criminal activity.

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NON-PRECEDENT DECISION

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waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The August 11, 2014, decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.