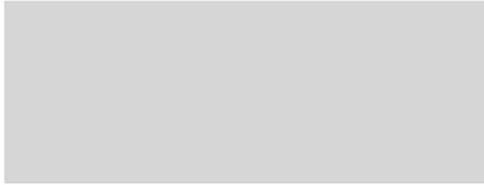




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 05 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.

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](http://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) 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, determining that the petitioner had not established that he was a victim of qualifying criminal activity, and thus, had also not demonstrated that he suffered substantial physical or mental abuse as a result of having been a victim of such activity. On appeal, the petitioner submits a brief.

*Applicable Law*

Section 101(a)(15)(U) of the Act provides 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;

\* \* \*

Section 101(a)(15)(U)(iii) of the Act lists the qualifying criminal activities for purposes of U nonimmigrant classification, and alternatively, allows for a petitioner to demonstrate he was a victim of “any similar activity” in lieu of one the enumerated criminal activities. According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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.

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. . . . ;

(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. . . . ;

(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.

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence*. Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . ; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or

prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 record indicates that the petitioner, a native and citizen of India, last entered the United States in June 1995, without admission, inspection or parole. He was placed into deportation proceedings pursuant to an Order to Show Cause filed with the immigration court on September 19, 1995. The petitioner was ordered deported *in absentia* on June 27, 1996. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 5, 2013. The director subsequently issued a Request for Evidence (RFE) establishing that the petitioner suffered direct and proximate harm as a result of the commission of qualifying criminal activity and that he suffered substantial physical or mental abuse based on that criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director accordingly denied the Form I-918 U petition, and the petitioner timely appealed. On appeal, the petitioner submits a brief asserting that he is a victim of qualifying criminal activity because he suffered direct and proximate harm as a result of the commission of such criminal activity.

#### *Claimed Criminal Activity*

In his written statements, the petitioner recounted a night in [REDACTED] 2007 when officers from the Federal Bureau of Investigation (FBI) came to the motel where he was employed as a desk clerk and sought his assistance in locating a dangerous suspect wanted for a robbery at a credit union. The petitioner recognized one suspect as a motel guest and agreed to contact the FBI if he saw him again.

Later that summer, the suspect checked into the motel and the petitioner contacted the FBI as requested. The petitioner described the frightening experience of having six to seven armed police officers arrive and take the man into custody. Afterwards, he identified two suspects in a line up and testified for the prosecution at the criminal trial. The petitioner described becoming more fearful of going to work and walking alone at night following these events.

The Form I-918 Supplement B that the petitioner submitted was signed on February 14, 2013 by [REDACTED] Chief Deputy District Attorney, Tenth Judicial Circuit – District Attorney’s Office (certifying official). The certifying official marked “Robbery 1 Weapon” next to the box marked “Other” in Part 3.1, which inquires about the criminal activity of which the petitioner was a victim. At Part 3.3, he indicated “Robbery; First Degree; weapons” and cited section 13A-8-41(a)(1), as the relevant criminal statute for the charge that was actually investigated or prosecuted. At Part 3.5, which asks for a description of the criminal activity being investigated, the certifying official stated that the criminal activity was an armed robbery of a credit union and that the petitioner, who was employed at the motel where the suspects were staying, was a “witness and not a victim.” In response to Part 3.6, inquiring about the injuries to the victim, he stated that a bank employee was hit in the head with a weapon, but reiterated that the petitioner “was not a victim and was not injured.”

### *Analysis*

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director’s grounds for denial. The appeal will be dismissed for the following reasons.

### Victim of Qualifying Criminal Activity

Section 214(p)(1) of the Act requires a Form I-918 U petition to be accompanied by a certification executed by a certifying official. The corresponding regulation implementing the provision requires the certifying official to state on the Form I-918 U petition that the petitioner “has been a *victim* of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting.” 8 C.F.R. § 214.14(c)(2)(i) (emphasis added). Here, the certifying official did not certify the petitioner as the victim of the certified criminal offense on the Form I-918 Supplement B, and in fact, specifically stated that the petitioner was *not* the victim of the certified armed robbery offense and was not injured during its commission.

On appeal, the petitioner asserts that whether he is a victim of qualifying criminal activity is a question of law and fact that may not simply be determined by the certifying official. However, the petitioner’s contention disregards the threshold regulatory requirement for U nonimmigrant petitions that a certifying official execute a Form I-918 Supplement B asserting that the petitioner is a *victim* of qualifying criminal activity. The certifying official here specifically stated that the petitioner was *not* the victim of the certified offense. We lack the authority to waive the statutory requirements for a certification described as implemented by the regulations. Accordingly, the petitioner has not demonstrated that he is a victim of qualifying criminal activity.

Even if the Form I-918 Supplement B indicated that the petitioner was the victim of the certified criminal activity, the record still does not demonstrate that the petitioner was a victim of qualifying criminal activity as required. Pursuant to the regulation at 8 C.F.R. § 214.14(a)(14), a “victim of qualifying criminal activity” is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. Here, the record does not demonstrate that the petitioner suffered direct or proximate harm as a result of the commission of the qualifying criminal activity, and, consequently, he does not qualify as a victim of qualifying criminal activity under 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. The record here indicates that the petitioner was not present at the time, or the scene, of the armed robbery and he was not a witness to the criminal activity. Further, the certifying official specifically indicated that though helpful in the subsequent investigation and prosecution of the armed robbery, the petitioner was not the victim of that criminal offense and was not injured. The petitioner’s actions in assisting enforcement officials in the apprehension of violent felons are certainly laudable. Nonetheless, he has not demonstrated that he was directly or proximately harmed as a result of the commission of qualifying criminal activity.

On appeal, the petitioner asserts that, notwithstanding the fact that he was not present during the commission of the armed robbery, he was directly and proximately harmed as a result of the commission of the offense. He contends that he suffered post-traumatic stress disorder and substantial psychological injury assisting investigators, which would not have occurred “but for” the perpetrator’s repeated use of his motel to escape law enforcement, and that such injury was a foreseeable result of the criminal acts of the perpetrators. The record indicates that the petitioner’s involvement in the matter would not have occurred but for the fact that he recognized one of the perpetrators as a prior motel guest, the perpetrators chose to return to the motel on a separate occasion months after the offense, and the petitioner acquiesced to law enforcement’s request for his assistance. If any of these events had not occurred, the petitioner would not have suffered psychological harm, notwithstanding the commission of the armed robbery. Thus, the petitioner’s claimed psychological harm did not directly result from the commission of the armed robbery, in which he was neither a witness nor a victim, and is not a natural or “foreseeable” consequence thereof.

The petitioner also contends that the director impermissibly added physical presence during the commission of qualifying criminal activity as a requirement to the regulatory definition of the term “victim of a qualifying criminal activity,” and he notes that U nonimmigrant status may be conferred on family members who were not physically present during the qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(a)(14)(i) does make a specific exception for family members as indirect victims where the direct victim is deceased or incapacitated. However, that provision is not applicable

here, as the petitioner seeks to qualify as the *direct* victim of qualifying criminal activity by demonstrating that he was directly or proximately harmed, which he has not shown. Moreover, the AG guidelines specifically indicate “that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims[,] but provide [] discretion to treat as victims bystanders who suffer unusually direct injuries as victims.” See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. at 53016 (citing the AG Guidelines). Thus, even bystanders to a qualifying criminal activity must demonstrate “unusually direct injuries” to qualify as a victim of qualifying criminal activity. Here, the petitioner was not a bystander, and the psychological harm he incurred was indirect, resulting from events several steps removed from, and months after, the actual commission of the criminal activity. Although we recognize the difficulties and fear the petitioner faced while assisting law enforcement officials in the apprehension of violent felons, the record is insufficient to demonstrate that he was directly and proximately harmed as a result of the commission of the armed robbery.

The petitioner also asserts that he suffered direct and proximate psychological harm because he was a victim of the perpetrator’s ongoing criminal conduct following the armed robbery, namely the commission of the violent felony of fleeing or eluding arrest. However, the harm a petitioner suffers must result from the commission of a qualifying criminal activity that has been certified by a certifying agency. 8 C.F.R. § 214.14(c)(2)(i) (requiring as initial evidence with a Form I-918, a certification from a certifying official stating that the petitioner has been a victim of qualifying criminal activity that the certifying agency is investigating or prosecuting). Here, the only criminal activity certified at Part 3.1 of the Form I-918 Supplement B is first degree robbery involving a weapon. The record otherwise lacks any evidence from the certifying official or law enforcement records indicating that the offense of fleeing or eluding arrest was also investigated or prosecuted, or that the petitioner was the victim of such an offense. Upon review of the record in its entirety, the petitioner has not established that he was directly or proximately harmed as a result of the commission of a qualifying crime. Consequently, he has not established that he is a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14).

#### First Degree Robbery (Weapon) under Alabama Law Is Not A Qualifying Criminal Activity

Beyond the decision of the director, the petitioner has not established that the certified criminal offense on the Form I-918 is a qualifying criminal activity or substantially similar to one of the qualifying crimes enumerated at section 101(a)(15)(U)(iii) of the Act.<sup>1</sup> When determining what criminal activity a certifying agency detected, investigated or prosecuted, we look to the relevant criminal statute as provided on the Form I-918 Supplement B and on any accompany reports. Here, as discussed, the certifying official listed only the offense of First Degree Robbery (Weapon) on the

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Form I-918 Supplement B is and provided the corresponding statute at ALA. CODE § 13A-8-41(a)(1). The record lacks any evidence from the certifying official or law enforcement records that another crime was also investigated or prosecuted. Accordingly, a careful review of the record establishes that the certifying agency investigated or prosecuted the crime of First Degree Robbery (Weapon). However, robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act and the record does not indicate that it is substantially similar to one of the qualifying crimes. Accordingly, the petitioner has not established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

#### Substantial Physical or Mental Abuse

As the petitioner has not established that he was the victim of qualifying criminal activity, he necessarily has also not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

#### Possession of Information Concerning Qualifying Criminal Activity

Beyond the director's decision, as the petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

#### Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

Beyond the director's decision, as the petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

#### Jurisdiction of Qualifying Criminal Activity

Beyond the director's decision, as the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

#### *Conclusion*

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act, and beyond the director's decision, he has also not established that the certified criminal activity of first degree robbery (weapon) is a qualifying crime or substantially similar to one of the qualifying criminal activities listed at section

101(a)(15)(U)(iii) of the Act. Consequently, the petitioner does not meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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.