



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) 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.

The director denied the petition because the petitioner did not establish that she was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, possesses information concerning the qualifying criminal activity, and has been helpful to authorities investigating or prosecuting 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 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;

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

The regulation at 8 C.F.R. § 214.14(a)(14) states that the term *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” and further provides that:

(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 [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. . . .
- (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

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 Honduras who last entered the United States in November 2004 without inspection, admission or parole. The petitioner was placed into removal proceedings

on January 1, 2005 and was ordered removed from the United States on October 26, 2005. The petitioner's sister, [REDACTED] disappeared from her home on [REDACTED] 2012. Following a family member's confession to the kidnapping and murder, the police recovered the victim's body in a lake in an advanced state of decay.¹ The petitioner identified the body and the criminal defendant was convicted, pursuant to his guilty plea, of second degree murder, felonious assault, larceny from the person, and first degree kidnapping. The petitioner was 36 years old when her sister was murdered at the age of 28. The petitioner filed the instant Form I-918 U petition on October 7, 2013. On July 18, 2014, the director issued a request for evidence (RFE) to obtain a copy of the petitioner's deceased sister's birth certificate. The petitioner responded to the RFE with a copy of the birth certificate establishing a full sibling relationship, 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 asserts that she was a direct victim of her sister's kidnapping and murder.

Analysis

We conduct appellate review on a *de novo* basis. The relevant evidence submitted below and on appeal does not establish that the petitioner was a direct or indirect victim of the qualifying crime committed against her youngest sister.

The Petitioner is Not a Victim of Her Sister's Kidnapping or Murder

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed on May 9, 2013 by [REDACTED] Assistant District Attorney, [REDACTED] North Carolina (the certifying official). At Part 3.1, the certifying official indicated that the petitioner was a victim of kidnapping and murder, both qualifying crimes, and at Part 3.5 that the petitioner was the deceased victim's sister. The certifying official noted at Part 4.5 that the petitioner helped to identify the victim's body, identified the defendant, and testified in court proceedings in the prosecution of the defendant.

On appeal, the petitioner submits a second personal statement in which she recounts that she and [REDACTED] worked together for six years at an assembly plant, rode to work together, talked "all day every day," lived near to one another, and were best friends. The petitioner states she resided with her sister for several years when [REDACTED] first came to the United States. The last time the petitioner saw her sister alive was on the Saturday before her death at the birthday party of [REDACTED] one-year old son. The petitioner indicates that when [REDACTED] did not report for work the following Monday, she did not worry, but that by evening the family was very concerned about [REDACTED] disappearance

¹ The assailant, [REDACTED] was the brother-in-law of the victim's husband and lived in the same house with the victim and her family. He accompanied the family on numerous search expeditions to look for the petitioner's sister. The police arrested him after finding his car containing the victim's blood. He confessed to beating the victim with a hammer.

and began searching for her. The petitioner states that the search lasted for eleven days,² and when they were finally notified that her sister had been found, she and other family members went to identify [REDACTED] remains. The petitioner states that it was difficult to positively identify the remains and it has been difficult to erase the memory. She adds that she did not work for a month and a half following her sister's murder. Also of record is an initial evaluation and treatment plan from III, [REDACTED] recommending individual outpatient therapy and further medical evaluation for the petitioner. The petitioner indicates that she was in therapy until the summer of 2014, that her daughter and [REDACTED] daughter are still in therapy, and that she and her siblings are helping with [REDACTED] two children.

In the decision denying the Form I-918 U petition, the director cited the regulatory definition of indirect victim at 8 C.F.R. § 214.14(a)(14)(i), and stated that the petitioner did not meet the definition because she was not a sibling under the age of 21 at the time of the qualifying criminal activity.³ The petitioner does not contest the director's finding that she is not a "victim of qualifying criminal activity" as defined at 8 C.F.R. § 214.14(a)(14)(i).

The director determined further that the petitioner did not suffer direct and proximate harm resulting from the qualifying crimes. On appeal, the petitioner asserts that she qualifies as a direct victim of her sister's kidnapping and 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.

The petitioner contends that USCIS should adopt an expansive definition of victim to conform to the intent of Congress in enacting legislation for alien victims of certain criminal activity, and cites section 1513(a)(2)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. Law No. 106-386 (Oct. 28, 2000), which provides:

The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed

² The record shows that the criminal defendant accompanied the family on numerous search expeditions.

³ Among other potential family members, a spouse qualifies as an indirect victim under the cited regulation. USCIS records indicate that the victim's husband's application for U nonimmigrant status was approved.

against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

There is no specific language in section 1513(a)(2)(A) of the VTVPA to suggest that USCIS defined the term “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14) against Congressional intent. Section 1513(a)(2)(A) of the VTVPA, while stating that the legislation’s purpose is to protect alien victims of crimes by encouraging them to report their victimization to law enforcement authorities, does not indicate that the term “victim” should be defined broadly to include extended family members who themselves have not been victimized.

While there may be circumstances under which a bystander to a qualifying crime may suffer unusually direct injuries as a result of witnessing a violent crime, the petitioner in this case was not present when her sister was kidnapped and murdered. The Form I-918 Supplement B does not support that the petitioner suffered direct and proximate harm from the kidnapping and murder. The certifying official did not describe any direct and proximate harm to the petitioner resulting from the criminal activity at Part 3.5. Although the record shows that the petitioner has been greatly affected by her sister’s death, the record does not establish that she was directly or proximately harmed as a bystander to the criminal activity resulting in her sister’s death. *See* Preamble to the Interim Rule, 72 Fed. Reg. 53016-17. The petitioner is, therefore, not the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of kidnapping and murder, the evidence in the record does not demonstrate that the petitioner’s kidnapping and murder were investigated or prosecuted, but rather that the petitioner’s sister was the victim of these crimes. The petitioner has not, therefore, demonstrated that she is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner has not established that she was the victim of qualifying criminal activity, she has also not established that she 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. Accordingly, we shall not further address this issue.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also not established that she possesses information concerning such a crime or

activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also not established that she 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.

Conclusion

The petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. Accordingly, she has not demonstrated that she meets 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. The petition remains denied.