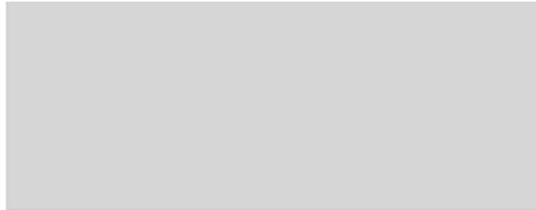


(b)(6)

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



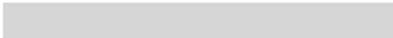
U.S. Citizenship  
and Immigration  
Services



DATE: **AUG 06 2015**

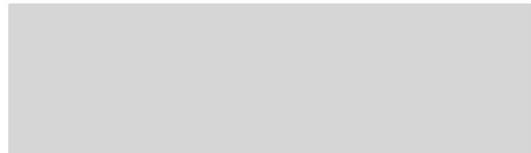


IN RE: Petitioner:



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,

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

 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 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 record did not establish that the petitioner was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, possesses information concerning the qualifying criminal activity, has been helpful to authorities investigating or prosecuting qualifying criminal activity and that the qualifying crime took place within the jurisdiction of the United States. 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;

\* \* \*

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

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). 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 includes the following at 8 C.F.R. § 214.14(a)(14)(i):

(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, [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 . . . .
- (4) The qualifying criminal activity occurred in the United States . . . .

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 petitioner is a native and citizen of Poland who last entered the United States on July 16, 1999 as a lawful permanent resident of the United States. On June 25, 2007, he was placed into removal proceedings. On June 16, 2008, the immigration judge terminated the petitioner's lawful permanent resident status and granted him voluntary departure. On October 14, 2009, the Board of Immigration Appeals affirmed the immigration judge's decision and granted the petitioner 60 days to voluntarily depart from the United States. On [REDACTED] the petitioner's mother was killed when the automobile in which she was traveling was struck by a vehicle involved in a chase and shooting between rival gangs. On the death certificate, the coroner listed the petitioner's mother's manner of death as homicide. On March 1, 2012, the petitioner filed the instant Form I-918 U petition and the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On April 26, 2012, 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. The director denied the petition and the petitioner timely appealed.

On appeal, the petitioner asserts that he was both a direct and an indirect victim of his mother's 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 victim of murder, a qualifying crime. When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by Sergeant [REDACTED] Records Division, [REDACTED] Police Department (certifying official). At Part 3.1, the certifying official identified the crime as murder and felonious assault, and listed the statutory citation for the crime at Part 3.3 as 720 ILCS 5/9-1 (first degree murder).<sup>1</sup> At Part 3.5, the certifying official described the petitioner's involvement in the criminal activity being investigated or prosecuted as being the son of the victim. The petitioner also submitted a personal statement in which he explained that his girlfriend's mother received a telephone call from the hospital informing her that her husband and the petitioner's mother were in critical

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<sup>1</sup> See 720 ILL. COMP. STAT. 5/9-1 (2012).

condition following an automobile accident. At the hospital, the petitioner learned that both his mother and his girlfriend's father had been killed, and he identified his mother's body.<sup>2</sup>

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 he was not a child under the age of 21 at the time of the qualifying criminal activity. The director determined further that the petitioner did not suffer direct and proximate harm resulting from the murder.

On appeal, the petitioner asserts that he was directly and proximately harmed by his mother's murder, much like a bystander to a crime may suffer harm from witnessing its commission. The record shows that the petitioner has been deeply affected by his mother's death. However, the petitioner does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14)(i). The petitioner's mother is the direct victim of the qualifying criminal activity and under the cited regulation, because the petitioner was 28 years old on the date of his mother's murder, he does not meet the definition of an indirect victim.

The petitioner contends that USCIS should adopt a more expansive definition of indirect 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 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.

The petitioner asserts that he qualifies as an indirect victim under the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) because he was his mother's

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<sup>2</sup> In the appeal brief, counsel for the petitioner incorrectly states that the petitioner's mother had remarried [REDACTED] who was killed in the accident, and that [REDACTED] was the petitioner's stepfather. In fact, [REDACTED] was the petitioner's girlfriend's father, not his own stepfather.

“next friend” as defined in 8 C.F.R. § 214.14(a)(7).<sup>3</sup> That regulation specifically refers to persons acting on behalf of legally incompetent aliens and is not applicable in the instant proceeding. USCIS does not rely on the AG Guidelines when determining whether an individual is an indirect victim, as the regulation at 8 C.F.R. § 214.14(a)(14)(i) provides a specific definition of the term.<sup>4</sup> As an adult son, the petitioner cannot qualify as an indirect victim based solely on his familial relationship to the victim. Only a spouse, or children under the age of 18, may qualify in circumstances resulting in the victim’s death from murder or manslaughter. 8 C.F.R. § 214.14(a)(14)(i).

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 at the automobile accident that resulted in his mother’s death. The Form I-918 Supplement B does not support that the petitioner suffered direct and proximate harm as a witness to his mother’s murder. The certifying official did not provide any probative details about the petitioner’s role in the crime and its subsequent investigation, such as whether the petitioner was the actual victim, a witness to the crime, or a complainant. The certifying official did not describe any direct and proximate harm to the petitioner resulting from the criminal activity or any known or documented injury to the petitioner at Parts 3.5 and 3.6, and did not provide any information regarding the petitioner’s helpfulness at Part 4.5. The certifying official also did not attach any police reports, court records or other investigative information relating to the crime that she certified on the Form I-918 Supplement B. Although the record shows that the petitioner has been greatly affected by his mother’s tragic death, the record does not establish that he was directly or proximately harmed as a bystander to the qualifying criminal activity resulting in his mother’s death. *See* Preamble to the Interim Rule, 72 Fed. Reg. 53016-17. Consequently, the petitioner is 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 murder, the evidence in the record does not demonstrate that the petitioner’s murder was investigated or prosecuted, but rather that the adult petitioner’s mother was murdered. The petitioner has not, therefore, demonstrated that he 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 he was the victim of qualifying criminal activity, he has also not established that he suffered substantial physical or mental abuse as a result of having

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<sup>3</sup> Although the petitioner states that his mother lived with his brother’s family at the time of the accident, he claims that he was his mother’s caretaker since the death of his father.

<sup>4</sup> In its Preamble to the Interim Rule (72 Fed. Reg. 53014, 53017), USCIS acknowledged the AG Guidelines only as a resource in developing the term “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14).

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 he was the victim of a qualifying crime or criminal activity, he has also not established that he 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 he was the victim of a qualifying crime or 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

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. Accordingly, he has not demonstrated that he 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.