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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

DATE: AUG 07 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. 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".

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), finding that the petitioner did not establish that he suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity and possessed information about the crime, and therefore also could not meet the remaining statutory requirements. On appeal, the petitioner submits a letter.

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; stalking; 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; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 regulations governing the U nonimmigrant classification provide the following definition of a victim at 8 C.F.R. § 214.14(a):

(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 regulatory definition of a 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) (Interim Rule) (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 AG Guidelines further explain, “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. However, the Interim Rule clarifies that while USCIS may find certain petitioners to be eligible for U nonimmigrant status as a result of having been bystanders to a violent crime, only those “who suffer unusually direct injuries as victims” will qualify. Interim Rule, 72 Fed. Reg. at 53016-17.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). 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 who claims to have last entered the United States in March 2000 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on June 4, 2012. The director issued a request for evidence (RFE) that the petitioner met the definition of a victim and suffered substantial physical or mental abuse. The petitioner responded to the RFE with a brief and additional evidence. The director found that the evidence was insufficient to establish that the petitioner was the victim of a qualifying crime and had suffered substantial physical or mental abuse as a result, and therefore found that he also could not meet the remaining statutory requirements. The director denied the petition and the petitioner filed a timely appeal.

Certified Criminal Activity

The Form I-918 Supplement B was signed on May 16, 2012, by [REDACTED] Assistant County Attorney, Criminal Division, Office of the [REDACTED] County Attorney, [REDACTED] Minnesota (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity that was investigated or prosecuted as "Other: Burglary." At Part 3.3, the certifying official cited Minn. Stat. Ann. § 609.582(1)(c) (burglary involving assault on a person within the building or on the property), Minn. Stat. Ann. § 609.2247.2 (assault by strangulation against a family or household member), and Minn. Stat. Ann. § 609.713 (terroristic threats), as the relevant criminal statutes for the criminal activity that was investigated or prosecuted. The certifying official stated at Part 3.5 that the perpetrator "entered [the petitioner's] home and assaulted [the petitioner's] daughter. [The petitioner] had not given permission for the defendant to enter the residence."

Qualifying Criminal Activity

The relevant evidence submitted below and on appeal establishes that the criminal activity cited in the Form I-918 Supplement B is a qualifying criminal activity. The director's contrary conclusion will be withdrawn.

The perpetrator was convicted of domestic assault by strangulation in violation of Minn. Stat. Ann. § 609.2247.2, which provides:

Subdivision 1. Definitions. (a) As used in this section, the following terms have the meanings given.

(b) "Family or household members" has the meaning given in section 518B.01, subdivision 2.

(c) "Strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

Subd. 2. Crime. Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

Minn. Stat. Ann. § 609.2247 (West 2015).

Minn. Stat. Ann. § 518B.01.2(b) (West 2015) provides the following definition of “family or household members”:

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
- (7) persons involved in a significant romantic or sexual relationship.

Domestic assault by strangulation is a crime of domestic violence, which is a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. The police reports indicate that the perpetrator, the former boyfriend of the petitioner’s daughter, broke into the petitioner’s home at night, bit the petitioner’s daughter’s nose, threatened to kill her, strangled her in her bedroom, and then followed her into the kitchen and strangled her there before dropping her to the floor. According to Minn. Stat. Ann. §§ 609.2247.2 and 518B.01.2(b), the statutes under which the perpetrator was convicted, this was a domestic violence offense against a family or household member.

Although Part 3.1 of the Form I-918 Supplement B indicated that the petitioner was the victim of burglary, the certifying official also indicated at Part 3.3 that domestic assault by strangulation was investigated or prosecuted. Additionally, the attached police reports indicate that the crime was investigated as a domestic assault, and the conviction records demonstrate that the perpetrator pled guilty to domestic assault by strangulation.

The qualifying criminal activities set forth in section 101(a)(15)(U)(iii), including domestic violence, are not listed as specific statutory violations but, rather, in broader terms, allowing for the possibility that varying state criminal statutes may name an offense differently than those on the statutorily enumerated list. 72 Fed. Register 53014, 53018 (Sept. 17, 2007). In the instant case, the record demonstrates that the perpetrator was convicted of a domestic violence offense under the laws of Minnesota and that the certifying official included that offense in the Form I-918 Supplement B and in the police reports submitted with the Form I-918 Supplement B. Consequently, the evidence

establishes that the crime investigated and prosecuted was the qualifying criminal activity of domestic violence.

Victim of Qualifying Criminal Activity

The evidence also establishes that the petitioner was a victim of the qualifying criminal activity. The petitioner's daughter was 22 years old at the time of the crime, so the petitioner does not qualify as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i). However, the petitioner has demonstrated that he suffered direct and proximate harm as a result of being a bystander to the crime.

Although the petitioner did not witness his daughter being strangled, he woke to the sound of her screams and found her bleeding from the neck. He further stated that, as the perpetrator left the house, the perpetrator told the family, "If you put me in jail, I'll come back to get all of you." The petitioner was present during a violent crime perpetrated in his home, confronted the perpetrator immediately after the perpetrator strangled the petitioner's daughter and dropped her to the floor, and was directly threatened with violence by the perpetrator.

Additionally, according to the petitioner's affidavits, the affidavits of his family and friends, and a psychological report from [REDACTED] Licensed Associate Marriage and Family Therapist, the petitioner is deeply traumatized by the incident and has experienced ongoing fear for the safety of his family. [REDACTED] indicated that the petitioner has chronic posttraumatic stress disorder related to "Death Threat of Family Member and Self" and being the victim of a crime. Therefore, the evidence demonstrates that the petitioner was directly and proximately harmed by the domestic assault by strangulation that occurred in his home, and he suffered "unusually direct injuries" as a bystander to this violent crime against his daughter. *See* Interim Rule, 72 Fed. Reg. at 53016-17. Accordingly, the petitioner is a victim of a qualifying crime or criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. The director's conclusion to the contrary is withdrawn.

Substantial Physical or Mental Abuse

The evidence also demonstrates that the petitioner suffered substantial mental abuse as a result of being the victim of qualifying criminal activity. In his affidavit filed with the Form I-918 U petition, the petitioner stated that the assault on his daughter was traumatic for his family and that they were afraid they would be burglarized or attacked in their home again. In a supplemental affidavit filed in response to the RFE, the petitioner claimed that although he was asleep when the perpetrator broke into his house, he "heard [his daughter's] screams and found her bleeding from her neck." He also stated that, as the perpetrator left the house, the perpetrator threatened the family.

The petitioner reported that, after the attack, he changed all the windows and locks on his house but still did not feel safe. He indicated that he eventually moved his family to a new house, where he again worked to secure all windows and doors. He stated that he placed double locks and chains on the doors, installed motion detector lights at the entrances, and remodeled a room in the basement for his daughter, including a double glass door to enable her to see anyone outside of her room, so she can feel

more secure. The petitioner also reported that he fears for the safety of his son, who is in a wheelchair and is home alone during the day, and that, due to fear, his son does not open any windows while home alone. The petitioner stated that he continues to fear for the safety of his family.

A friend of the petitioner's family, [REDACTED] stated in an affidavit submitted with the RFE response that the petitioner and his family have been "devastated" by the crime. [REDACTED] reported that the petitioner became withdrawn after the incident, worked to remodel his home to make it safer, and told her "how he lost peace of mind since that time and how everyone in the family has been distressed and fearful of the attacker's return."

In her psychological evaluation, [REDACTED] indicated that the symptoms of the petitioner's chronic post-traumatic stress disorder included "intense psychological distress," nightmares and inability to sleep, fear for his life, inability to leave the house except for basic necessities, and difficulty forming and maintaining relationships with others. Additionally, [REDACTED] stated that the petitioner's hypervigilance was leading to "obsessive behavior patterns," including replacing all windows and doors of his first home, moving his family across town because he did not feel safe despite the work he did on his first home, checking the perimeter of his house every night at dusk, and repeatedly checking and locking all windows and doors. [REDACTED] reported that the petitioner's post-traumatic stress disorder caused "significant distress and impairment in social, occupational and other areas of functioning."

On appeal, the petitioner submits a letter from [REDACTED] a retired police captain and former certifying official with the [REDACTED] Police Department. [REDACTED] states that, in his opinion, the petitioner likely "suffered great emotional trauma when his home . . . was violated and by having his daughter assaulted while he slept." In [REDACTED] opinion, the violent assault and death threats against the petitioner's daughter also caused the petitioner to suffer because he could not protect his daughter.

In determining whether a petitioner has suffered substantial abuse, the applicable regulatory factors require that we consider the nature, severity, and duration of the perpetrator's conduct, as well as the severity and permanence of the resulting injury. 8 C.F.R. § 214.14(b)(1). In the instant case, the domestic assault by strangulation that occurred in the petitioner's home was a serious violent crime. The evidence establishes that the crime caused serious and long-term harm to the petitioner's mental health. Therefore, the petitioner suffered substantial 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. The director's conclusion to the contrary is withdrawn.

Possesses Information Regarding Qualifying Criminal Activity

The director also briefly noted that the petitioner did not establish that he possessed information about the crime as required by 101(a)(15)(U)(i)(II) of the Act because he did not directly witness the assault on his daughter. However, as that determination was based solely on the director's finding that the petitioner had not established that he suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, which we have now withdrawn, we will return the

matter to the director to reconsider the petitioner's eligibility under section 101(a)(15)(U)(i)(II) of the Act.

Admissibility

Additionally, the regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants 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. Here, the petitioner filed the required Form I-192 waiver application, which the director denied on the basis that the petitioner was ineligible for the waiver of inadmissibility since his underlying Form I-918 U petition had been denied. 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 return the matter to the director for reconsideration of the Form I-192 as well.

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The director's decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 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.