



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 12 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

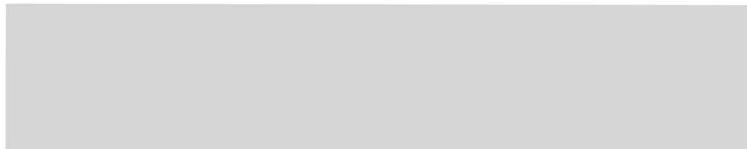
IN RE:

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,

*for* Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied the petition and a subsequent motion. 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 initially denied the petition because the record did not establish that the petitioner was an indirect victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14)(i). On motion, the director found additionally that the petitioner was neither a direct victim nor a bystander. On appeal, the petitioner submits a brief.

*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;

\* \* \*

Felonious assault and attempted murder are listed as qualifying criminal activities 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 Mexico who claims to have last entered the United States in 1995 without inspection, admission, or parole. 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 January 15, 2013. The director subsequently issued a Request for Evidence (RFE) seeking to obtain the petitioner's marriage certificate to C-R-<sup>1</sup> to establish that the petitioner was a victim of qualifying criminal activity as defined by regulation. The petitioner responded to the RFE with a letter stating that he was not married to C-R-, and that he should be considered as a bystander victim who suffered harm due to the near death of C-R-, his common-law wife, partner of 19 years, and mother of his teenage daughters. The director denied the petition, finding that the petitioner was not an indirect victim of a qualifying crime as defined in the regulation at 8 C.F.R. § 214.14(a)(14)(i). The director also denied the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), as the Form I-918 U petition was denied. The petitioner filed a motion to reopen and reconsider, a brief, and a new Form I-192, and the director again denied the petition, finding the evidence insufficient to establish that the petitioner was either a direct, indirect or bystander victim of a qualifying crime. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that he is a bystander victim who suffered direct and proximate harm as a result of the qualifying criminal activities of felonious assault and attempted murder committed against C-R-.

### *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 crimes committed against his domestic partner.

#### The Petitioner is Not a Victim of the Crimes Committed Against His Partner

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed on September 29, 2012 by [REDACTED] of the [REDACTED] Police Department, [REDACTED], California (certifying official). In Part 3, the certifying official indicated that the petitioner was the indirect victim of felonious assault and attempted murder committed against his domestic partner by a former employee of the petitioner.<sup>2</sup> In Part 5, the certifying

<sup>1</sup> Name withheld to protect the individual's privacy. The record indicates that C-R- was the direct victim of the crime, and the petitioner's longtime domestic partner.

<sup>2</sup> In Part 3.3, the certifying official listed CAL. PENAL CODE §§ 187, 664 (West 2015) (attempted murder); PENAL § 211 (West 2015) (robbery); PENAL § 220 (West 2015) (attempted rape); and PENAL § 245(a)(1) (West 2015) (assault with deadly weapon) as the criminal statutes under which the criminal

official indicated that C-R- was incapacitated due to the criminal activity; the petitioner cooperated extensively with detectives on her behalf; and the petitioner's cooperation was instrumental in helping to arrest, convict and sentence the suspect.

The petitioner, in his personal statement, recalled receiving a telephone call at work notifying him that his partner had been critically injured by someone who had broken into their home. He indicated that he sped to his house, which was cordoned off with yellow tape and inaccessible to him during the police investigation. The petitioner stated that he arrived at the hospital shortly afterwards, and that C-R- had to undergo emergency surgery for a punctured lung. He stated that he later learned that one of his trusted employees, [REDACTED], had robbed the home of jewelry and cash, attempted to rape C-R- and stabbed her multiple times. Officer [REDACTED] report indicates that the suspect threatened to harm their two daughters if she reported the incident to the police. The petitioner stated that when he was allowed back into the home later that night, he cleaned C-R-'s blood from the bathroom floor with a towel. He stated that the suspect, [REDACTED] remained at large until he was arrested with the petitioner's assistance in April 2011. The petitioner submitted a letter from his therapist, [REDACTED] LCSW, who indicated that the petitioner presented with intense distress and demonstrated the classic symptoms of post-traumatic stress disorder (PTSD).

In the initial 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 married to his partner at the time of the qualifying criminal activity. On motion, the petitioner does not contest the director's finding that he is not an indirect victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14)(i).<sup>3</sup>

On motion, the director determined that the petitioner did not suffer direct and proximate harm resulting from the qualifying crimes. On appeal, the petitioner asserts that he qualifies as a direct victim of his partner's attempted murder and felonious assault. 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

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activity was investigated or prosecuted. As the certifying official indicated that the petitioner was the indirect victim of felonious assault and attempted murder at both Parts 3.1 and 3.3, we do not reach whether the remaining crimes listed as investigated or prosecuted at Part 3.3, robbery and attempted rape, are substantially similar to any qualifying criminal activity listed at Part 3.1.

<sup>3</sup> The regulation at 8 C.F.R. § 214.14(a)(14)(i) requires that the direct victim of the crime either be deceased due to murder or manslaughter, or incompetent or incapacitated and unable to testify on his or her behalf. While the certifying official stated that C-R- was incapacitated due to the criminal activity, the record reflects that the direct victim provided the police with a full report of the incident and that she was able to assist in the investigation or prosecution of the criminal activity. For this additional reason, the petitioner is not an indirect victim under the regulation.

“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 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 his partner was assaulted. Although the record shows that the petitioner has been greatly affected by the criminal assault on his partner, the record does not establish that he was directly or proximately harmed as a bystander to the criminal activity. *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 indirect victim of felonious assault and attempted murder, the evidence in the record does not demonstrate that the petitioner’s assault and attempted murder were investigated or prosecuted, but rather that the petitioner’s partner was the victim of these crimes. 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.

*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.