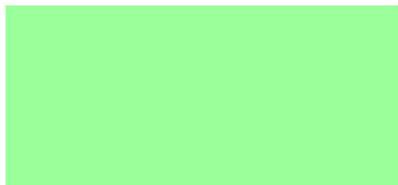


(b)(6)

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



U.S. Citizenship
and Immigration
Services

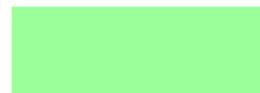


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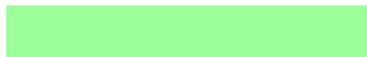
Office: VERMONT SERVICE CENTER

FILE:



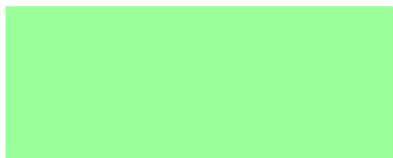
IN RE:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law or establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with 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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 for failure to establish that the petitioner was the victim of a qualifying crime or criminal activity. On appeal, the petitioner submits a brief, a summary of applicable law, copies of AAO decisions, and copies of New York Penal Statutes.

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; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 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 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 (emphasis added).

The AAO conducts appellate review on a *de novo* basis. 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 entered the United States in November of 1991 without inspection, admission, or parole. In May 2007, the petitioner's sister was the victim of attempted abduction. The petitioner filed the instant Form I-918 U petition on October 2, 2012. On October 10, 2013, the director issued a request for evidence (RFE) that the petitioner was a

victim of a qualifying crime and had suffered substantial physical or mental harm as a result. The petitioner responded to the RFE with a letter from the Chief of the [REDACTED] District Attorney's Office, [REDACTED], New York; letters and affidavits from the petitioner's family and friends; a supplementary affidavit from the petitioner; letters regarding the petitioner's mental health treatment; a copy of the petitioner's sister's birth certificate; and copies of the Form I-918 approval notices for the petitioner's mother and brother. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly. The petitioner timely appealed the denial of the Form I-918 U petition.

Claimed Status as a Victim

In his September 10, 2012 affidavit, the petitioner stated that he and his younger sister were home alone on May 13, 2007 when his sister went to the store. Soon after she left, the buzzer to his apartment rang repeatedly and the petitioner heard his sister crying over the intercom. He ran downstairs and found his sister crying in the lobby. A man then emerged from the building and the petitioner's sister pointed at the man and attempted to shield herself. The petitioner and some neighbors detained the perpetrator until the police arrived. The petitioner stated that the perpetrator made him "feel scared and angry at the same time."

In a second affidavit, dated December 17, 2013, the petitioner stated that he has been unable to recover from the attack on his sister and continues to experience depression and anxiety related to the event. After the incident, he feared for his life, thought he would be accused of endangering his sister, and had recurring nightmares. His depression and anxiety caused him to withdraw from social activities and negatively affected his performance in college despite the fact that he received counseling and took antidepressants.

The record also contains letters from the petitioner's family and friends. The petitioner's mother states that the petitioner has not "been the same" since the attack and has seemed isolated and upset. His step-father also indicates that the petitioner has blamed himself for the incident and has demonstrated changed behavior. The petitioner's sister, who was the direct victim of the attempted abduction, states that the petitioner has seemed upset and worried since the incident. She notes that he became depressed and told her that he feels guilty for what happened. The petitioner's brother also indicates that the petitioner has expressed guilt over the incident and is anxious about his sister's safety.

In a letter dated December 6, 2013, counselors from the [REDACTED] state that the petitioner attended weekly therapy sessions from October 21, 2009 to August 20, 2012 due to "emotional and psychological distress that negatively impacted his overall ability to function." The treatment related to "depressive symptoms, issues regarding identity and self-esteem, and familial and academic difficulties." The Associate Director of the [REDACTED] Office of Counseling also indicates in a November 22, 2013 letter that the petitioner received counseling in 2008. She notes that the petitioner discussed various topics with his counselor, including "feeling inadequate in his ability to impact the lives of his younger siblings."

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Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of the qualifying crime committed against his younger sister.

In her denial letter, the director found that the petitioner was not a direct victim of a crime; rather, his sister was the direct victim. The director also found that the petitioner did not meet the definition of an indirect victim because he was over 18 years of age at the time the qualifying criminal activity occurred.

On appeal, the petitioner asserts that he was directly and proximately harmed by the attempted abduction of his sister because he was a bystander who suffered substantial emotional and psychological trauma due to the event. He states that he has experienced ongoing depression and anxiety related to the incident and that his personal relationships, education, and mental health have been negatively affected. According to the petitioner, he witnessed the event to the extent that he heard his sister crying after she escaped, helped comfort her, saw the perpetrator emerge from the building immediately after the incident, and helped detain the perpetrator.

The petitioner submitted with his U nonimmigrant petition a certified Form I-918 Supplement B, signed by [REDACTED] Chief, [REDACTED] Office of the District Attorney, [REDACTED] New York. Chief [REDACTED] indicated in Part 3 of the Form I-918 Supplement B that the crimes which were investigated or prosecuted were attempted kidnapping in the second degree, unlawful imprisonment in the second degree, trespass, burglary in the third degree, and endangering the welfare of a child. Chief [REDACTED] also attached a letter, dated August 8, 2012, to “clarify” the petitioner’s role in the case. She stated that the defendant “was accused of crimes committed, not against [the petitioner], but against his sister, . . . a minor. [The petitioner] was a witness in this case.”

The petitioner later submitted a December 2, 2013 letter from [REDACTED], Bureau Chief, [REDACTED] Office of the District Attorney, [REDACTED] Chief [REDACTED] expressed her support for the instant U petition and stated that the petitioner “participated in the identification and apprehension of a criminal defendant who was ultimately convicted of attempting to abduct [the petitioner’s] eleven year old sister.” She noted that the petitioner helped his sister at the scene “immediately after her ordeal” and supported his family during the trial. Chief [REDACTED] stated that, “while surely not as severely as it affected his sister, this event and participating in the trial must weigh on [the petitioner’s] mind.”

The record does not demonstrate that the petitioner suffered direct or proximate harm as a result of the attempted abduction of his sister. Although the petitioner arrived on the scene and helped his sister immediately after the incident, detained the perpetrator, and participated in the investigation and prosecution, he was not present at the time of the crime. The petitioner’s own statements show that he was in his apartment during the attempted abduction and was only alerted to the incident after his sister escaped. The Form I-918 Supplement B and accompanying letters from the District Attorney’s Office

also do not support the petitioner's claim that he was a direct victim; instead, they state that the victim was his sister and that the petitioner supported his family and law enforcement during the investigation and prosecution of the crime. The petitioner has been significantly affected by the incident and has experienced depression and anxiety related to fear for his sister's safety and guilt about what happened. Nevertheless, there is no support for his claim that he was directly or proximately harmed as a bystander to the criminal activity perpetrated against his sister. See Preamble to U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53016-17 (Sept. 17, 2007). Additionally, the petitioner is not an indirect victim of the crime because only a parent or unmarried sibling under the age of 18 may qualify as an indirect victim when the victim is incompetent or incapacitated. 8 C.F.R. § 214.14(a)(14)(i). In this case, the petitioner was over the age of 18 at the time of the qualifying criminal activity. Accordingly, the petitioner is not a victim of a qualifying crime or criminal activity as required by section 101(a)(15)(U)(i) of the Act.

Conclusion

Although the petitioner was greatly affected by the attempted abduction of his sister, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also failed to show that he can satisfy any of the criteria at section 101(a)(15)(U)(i) of the Act. Therefore, the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

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). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.