



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: FEB 19 2015 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]

APPLICATION: 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:

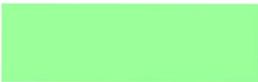
INSTRUCTIONS:

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 nor 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,

  
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 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 petitioner did not establish that she has been the victim of qualifying criminal activity, she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity, and she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the 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:

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

The regulations governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) provide specific definitions, and state, in pertinent part:

(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, [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. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(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, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

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 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."

We review these proceedings *de novo*.

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1999 without inspection. The petitioner filed the instant I-918, Petition for U Nonimmigrant Status (Form I-918 petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 17, 2012. She also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192), to waive her grounds of inadmissibility. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's marital relationship with the decedent and the death certificate. The petitioner responded with the death certificate, but she did not provide evidence of her marital relationship. The director denied the Form I-918 petition and the Form I-192 application. The petitioner timely appealed the denial of the Form I-918 petition.

The Form I-918 Supplement B that the petitioner submitted was signed by Chief of Police, [REDACTED] Police Department, [REDACTED] Oregon (certifying official), on May 1, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as murder that occurred on December 11, 2011. In Part 3.3, the certifying official refers to the Oregon Revised Statutes § 163.115 (murder) as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the investigation involves the death of a homicide victim who was killed "as a result of an explosion from a bomb type device." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner and her four children were "left with no immediate way to support themselves." The petitioner also submitted her declaration in which she states that she was not present at the time of the murder, but found out about the bomb's explosion and her partner's death after she arrived at the hospital.

#### *Victim of Qualifying Criminal Activity*

The director determined that the petitioner did not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). On appeal, the petitioner asserts that she qualifies as a victim of her partner's murder because she has suffered direct or proximate emotional and pecuniary harm as a result of his murder. The petitioner, however, cannot be the direct victim of the murder because she did not suffer the direct and proximate harm of the murder as she was not the individual who was killed by the bomb's

explosion. In cases where the direct victim was murdered, the regulation only includes as indirect victims the 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. 8 C.F.R. § 214.14(a)(14)(i). In this case, the petitioner was not married to her partner, so she would not qualify as a spouse. The petitioner asserts that her minor children are the victims of the murder of their father, and that as the mother of his children she would qualify as an indirect victim of the murder through the children. The indirect victim definition, however, does not extend beyond the specified family members. In this case, the petitioner does not qualify as a spousal victim as she was not married to her partner. Moreover, her children are U.S. citizens and are, therefore, ineligible for U nonimmigrant status. Section 101(a)(15)(U) of the Act. Accordingly, the petitioner does not meet the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14).

The petitioner further asserts that she qualifies as a bystander victim of her partner’s murder, and that the director erroneously determined that a bystander had to have been present during the commission of the crime. 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 evidence shows that the petitioner was not present at the time of the murder and that she had not witnessed her partner’s death after the explosion.<sup>1</sup>

The petitioner states that she is a bystander victim because she suffered an unusually direct injury as a result of a qualifying crime. In its Preamble to the U visa rule, USCIS stated:

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime[.]

72 Fed. Reg. 53014, 53016 (Sept. 17, 2007). There may be circumstances in which a bystander to a qualifying crime would suffer “unusually direct injuries” as a result of witnessing a violent crime. Although we recognize that the petitioner has been diagnosed with depression and anxiety resulting from the loss of her partner, and has been receiving therapy to help her cope with his death, the evidence shows that she was not present at the time the bomb exploded and injured her partner or when he later died from his injuries. Accordingly, the petitioner has not demonstrated that she can be considered a victim under the regulation at

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<sup>1</sup> The certifying official also did not indicate that the petitioner suffered any physical or mental injury beyond that at Part 3.6 of the Form I-918 Supplement B.

8 C.F.R. § 214.14(a)(14) as a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against her partner. Although we are sympathetic to the facts of this case and the difficult time the petitioner and her children have had due to the loss of her partner and their father, the evidence fails to establish that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

*Conclusion*

The petitioner failed to establish that she was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. In consequence, her failure to establish that she was the victim of qualifying criminal activity prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Furthermore, the petitioner is inadmissible to the United States and her ground of inadmissibility has not been waived. The petitioner is consequently ineligible for U nonimmigrant classification and her petition must remain denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As in all visa petition proceedings, the petitioner bears the burden of proving her 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, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.