(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

DATE: FEB 25 2015 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,

MDeadrid

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, an updated affidavit, records of psychological and medical treatment, financial and tax records, an affidavit from the petitioner's wife, educational and medical records regarding the petitioner's children, letters of support, evidence to show good moral character, information regarding depression and panic disorder, and articles relating to country conditions in Mexico.

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 --
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> > (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;
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> * * *
>
> (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) (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 Interim Rule explains that a bystander who suffers unusually direct injuries would be, for example, "a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage." *Id.*

We conduct 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 April 2000 without inspection, admission, or parole. In April 2004, the petitioner was present during an assault against his friend. The petitioner filed the instant Form I-918 U petition on April 16, 2012. On May 9, 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 brief, an affidavit, a psychological evaluation, a copy of a subpoena ordering him to appear as a witness, a statement from the friend who was the victim of the assault, and Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. 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 the affidavit filed with his Form I-918 U petition, the petitioner stated that he "was a witness of a crime caused against [his] friend . . . in which [his friend w]as injured . . . ." According to the petitioner, a man shouted insults at him and his friend and then hit his friend on the head with a broomstick. The petitioner stated that he defended his friend against further beatings by hitting the perpetrator. He then accompanied his friend to the hospital and spoke with law enforcement. The petitioner indicated that the incident caused him to "worry that something like that could happen to [him]."

In response to the RFE, the petitioner filed an amended affidavit in which he stated, "[W]hen the [perpetrator] attacked my friend, I really thought he was going to kill him. Also, I thought that he was going to kill me too because I had to hit him for him to stop hitting my friend." The petitioner claimed that he felt extreme fear during the assault and that he was concerned about the discrimination he and his friend experienced. He stated that the incident caused ongoing anxiety and worry for him, as well as nightmares and difficulties in his relationships with family and friends.

The petitioner filed an additional affidavit with his appeal in which he states that after hitting the petitioner's friend, the perpetrator "came toward" the petitioner. He asserts that he had to defend himself and his friend because he believed the perpetrator would kill them both. He reiterates that he has experienced ongoing fear, anxiety, and depression since the assault.

Family and friends have also indicated that the petitioner has been affected by the assault. The petitioner's wife states that the petitioner expressed intense fear about the assault on his friend and began to have nightmares. She also states that since the assault, the petitioner has withdrawn from family and friends, has appeared anxious and sad, and has not wanted to leave the house. The petitioner's friend, who was the victim of the assault at issue in the present case, claims that the petitioner "is not the same" since the incident. He believes that the petitioner was affected by witnessing the attack. He states that the petitioner now seems "sick" because he does not want to

socialize. The petitioner's sister-in-law also contends that the petitioner seems depressed and has been unable to recover from the trauma of the incident.

The record also contains reports of mental health treatment. In a psychological evaluation dated April 9, 2014, Ph.D., states that the petitioner has suffered severe depression, anxiety, and posttraumatic stress disorder as a result of the assault on his friend. According to the petitioner reported that the perpetrator of the assault attempted to hit him after hitting his friend. indicates that the petitioner has been "unable to manage the emotional consequences" of the incident. In a letter dated April 10, 2014, notes that the petitioner has been diagnosed with posttraumatic stress disorder with depression and was prescribed antidepressants. In a letter dated July 6, 2013, MA, LMFT, also reports that the petitioner has experienced fear and anxiety related to the assault and that he demonstrates symptoms of depression and posttraumatic stress disorder.

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was victim of the qualifying crime committed against his friend.

In her denial letter, the director found that the petitioner's friend, not the petitioner, was the direct victim of the assault. The director also found that the evidence was insufficient to show that the petitioner had suffered substantial physical or mental abuse as a result of the crime.

On appeal, the petitioner asserts that he was directly and proximately harmed by the assault on his friend, and that he was the direct victim of an attempted assault. He claims that the perpetrator made discriminatory remarks to him and his friend and that both were "in apprehension of immediate harm." He contends that while only his friend suffered physical harm, the perpetrator targeted both of them. The petitioner also asserts that although he failed to mention in his first affidavit that he was targeted by the perpetrator, this should not discredit his claim because "minor inconsistencies" are reasonable. He asserts that he has experienced ongoing depression and anxiety amounting to substantial mental abuse as a result of being a victim of the crime.

The petitioner submitted with his U nonimmigrant petition a certified Form I-918 Supplement B signed by Supervising Deputy District Attorney, In Part 3, question 6, indicates that the "victim, not [the petitioner], suffered a laceration to his head." She further notes in Part 4 that the petitioner "observed a victim being struck in head with a broom handle. He attempted to protect his friend from being hit."

The record does not demonstrate that the petitioner suffered direct or proximate harm as a result of the assault on his friend, or that he was a direct victim of assault or attempted assault. The Form I-918 Supplement B indicates that the petitioner was not the victim of the crime. Instead, it indicates that the petitioner was a witness and does not support his claim that he was directly targeted by the

perpetrator. Additionally, the petitioner's own submissions state that he was a witness to the crime against his friend rather than a direct victim. In statements accompanying his Form I-918 U petition and his response to the RFE, the petitioner indicated that he saw the attack on his friend, defended his friend from further harm, and later began to fear that he might be subject to a similar attack. The brief filed with his RFE response states that the petitioner "has suffered direct and proximate harm, as well as substantial mental abuse, as a result of the commission of qualifying activity toward his friend . . . ." Although he later claimed that the perpetrator directly targeted him in an attempted assault, the evidence of record does not support this claim. The Form I-918 Supplement B relates to qualifying criminal activity against the petitioner's friend, not the petitioner, and the record contains no additional documentation from law enforcement to document any criminal activity against the petitioner.

Although certain petitioners may qualify as victims as bystanders to a violent crime, the evidence does not support such a finding in this case. It is clear that the petitioner's presence during the assault on his friend affected the petitioner. He has experienced ongoing fear, anxiety, and depression since the incident and his psychological health has affected his daily life and relationships. However, these effects do not constitute "unusually direct injuries" as described by the Interim Rule such that he would qualify as a victim as a bystander. *See* Interim Rule, 72 Fed. Reg. at 53016-17. 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 affected by the assault on his friend, 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

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