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U.S. Citizenship
and Immigration
Services

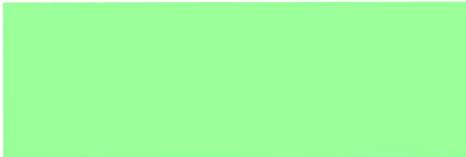


Date: **JAN 02 2015** Office: **VERMONT SERVICE CENTER** FILE:

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 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,

for 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 and the petition will remain denied.

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 failed to establish that she was a victim of 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 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;

Murder is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(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.

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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on November 14, 1993, without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on July 10, 2012. On November 4, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered direct and proximate harm, as well as substantial physical or mental abuse, as the result of the commission of qualifying criminal activity toward her son. The director also requested an updated Form I-918 Supplement B. The petitioner responded with an updated Form I-918 Supplement B and additional evidence, which the director found insufficient to establish her eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that she suffered "severe emotional and psychological harm as a direct result of the murder of her son," which "amounts to 'direct and approximate harm.'"

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the RFE. The first Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant [REDACTED] California, Police Department, on November 8, 2011. Lieutenant [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as murder. In Part 3.3, Lieutenant [REDACTED] referred to California Penal Code (CPC) § 186, murder, as the criminal activity that was investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, Lieutenant [REDACTED] indicated that the victim, the petitioner's son, "had been shot and mortally wounded" and his "death was connected to on going [sic] gang-activity in the area." At Part 3.6, Lieutenant [REDACTED] did not

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provide any information regarding any injuries, physical or mental, to the petitioner, but indicated that the petitioner is the mother of the victim, who “died as a result of the injuries he incurred [sic].”

The second Form I-918 Supplement B that the petitioner submitted in response to the RFE was signed by Inspector [REDACTED] California, Police Department (certifying official), on January 23, 2014. The certifying official provided the exact same information that was in the first Form I-918 Supplement B.

In her declaration submitted with the Form I-918 U petition, the petitioner recounted that early in the morning one day, her son was shot and killed when he was on his way home from visiting a friend. When she was notified of the shooting, her son had already passed away. She was contacted by the police and assisted them in their investigation of her son’s murder by providing information about his life, and has continued to maintain regular contact with the police department.

Victim of Qualifying Criminal Activity

The petitioner has not established that she is an indirect victim of the criminal activity perpetrated against her son. When a person is deceased due to murder or manslaughter and was over the age of 21 at the time of death, only the deceased’s spouse and children under the age of 21 may be considered the indirect victims of the qualifying criminal activity. See 8 C.F.R. § 214.14(a)(14)(i).¹ On November 18, 2007, the date the petitioner’s son was murdered, he was 21 years of age. Therefore, the petitioner does not have one of the qualifying familial relationships to the victim as described at 8 C.F.R. § 214.14(a)(14)(i).

In addition, the petitioner does not meet the general “victim” definition at 8 C.F.R. § 214.14(a)(14), which provides that a victim of qualifying criminal activity is an alien who “has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” The Attorney General Guidelines for Victim and Witness Assistance (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 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).

While there may be circumstances where a bystander to a qualifying crime may suffer “unusually direct injuries” as a result of witnessing a violent crime, the record shows that the petitioner was not in the vicinity

¹ The term “indirect victims” is discussed in the Preamble to the U visa rule. See 72 Fed. Reg. 53014, 53017 (Sept. 17, 2007).

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and did not witness any aspect of the commission of the qualifying criminal activity. The petitioner claims that her depression is a “direct and proximate harm” of her son’s death. However, the direct and proximate harm in this context is the petitioner’s son’s death, not the petitioner’s psychological injury. We recognize that the petitioner has been greatly affected by the loss of her son and is seeking therapy to help her cope with and heal from her son’s murder; however, the submitted evidence does not establish that she is a victim under the regulation at 8 C.F.R. § 214.14(a)(14). The petitioner has, therefore, failed 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

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.