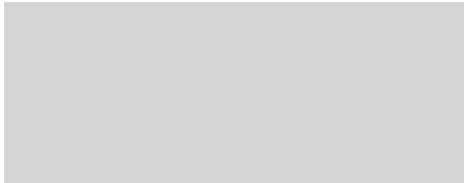


(b)(6)

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: **JUL 07 2015**

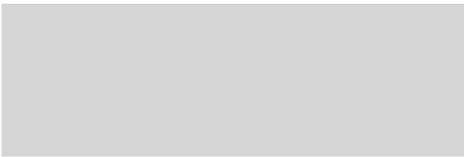


IN RE: Petitioner:



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 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,

*fr* Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the petition. 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 finding that the petitioner failed to establish that he was the victim of qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of his victimization, or that he possesses information about and was helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. On appeal, counsel 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;

\* \* \*

(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. section 214.14(a) provide for certain 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 [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 Venezuela who last entered the United States on June 4, 2009, pursuant to a nonimmigrant employment-based visa. On [REDACTED] the petitioner's 7 year old nephew was killed by a drunk driver while riding his bicycle. On January 9, 2013, 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 February 14, 2014, the director issued a Request for Evidence (RFE) requesting evidence regarding how the petitioner was an indirect or general victim under the applicable regulations and about any direct and proximate harm as well as substantial physical or mental abuse suffered as a result of the criminal activity. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner timely appealed the denial of the Form I-918 U petition.

#### *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 relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of his nephew's death. When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] Assistant District Attorney with the [REDACTED] County, North Carolina District Attorneys Office (certifying official). At Part 3.1, the certifying official identified the crime as manslaughter and "other: felony death by vehicle / DWI". At Part 3.5, the certifying official described the petitioner as "the uncle of the victim [who] suffered immense grief and has been a primary source of support for his immediate family." The petitioner also submitted a statement from his sister, the victim's mother, in which she stated that her brother was living several states away and that he got on an airplane as soon as she called him to tell him of her son's accident. She stated that the petitioner accompanied her and her husband to meetings with attorneys and the police and that he took over the financial aspect of their lives as the couple was too grief stricken to manage on their own. She also stated that the petitioner

spoke at the trial of the perpetrator regarding how her son's death affected the family. The petitioner's personal declaration states that he suffers flashbacks whenever he sees a child on a bicycle, he has nightmares, and he has been stressed, anxious, and hypersensitive as a result of his nephew's death.

While it is clear that the petitioner has been affected by his nephew's death, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). In cases where the direct victim was murdered, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried siblings of victims under 21 years of age. 8 C.F.R. § 214.14(a)(14)(i). In this case, the petitioner is the victim's uncle and does not qualify as an indirect victim of the criminal activity under the regulations. *See id.* The certifying official did not certify that the petitioner was the victim of any qualifying crime that was investigated or prosecuted, and noted that the petitioner is the uncle of the deceased.

On appeal, counsel asserts that the petitioner acted as a "next friend" in the investigation and prosecution of his nephew's death. 8 C.F.R. § 214.14(a)(7) defines "next friend" as:

[A] person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. . . [T]he next friend is not a party to the legal proceeding and is not appointed as a guardian.

The regulations provide that a "next friend" may appear on behalf of a victim for purposes of providing information regarding the criminal activity and assisting in the investigation and prosecution of the criminal activity. 8 C.F.R. § 214.14(b)(3). The regulations do not include "next friend" in the definition of "victim" for purposes of U visa eligibility. The petitioner provided assistance to his sister and her family when they were suffering from the loss of her son, however, the petitioner is not a "victim of qualifying criminal activity" as provided by 8 C.F.R. § 214.14(a)(14).

The director also noted that the petitioner did not qualify as a general victim because he had not established that he had suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. On appeal, counsel asserts that the petitioner suffered from emotional or psychological harm as a result of his nephew's killing. However, the petitioner was not the direct victim of manslaughter because he did not suffer the direct and proximate harm of manslaughter because he was not the individual who was killed. 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 (emphasis added). The evidence shows that the petitioner was not present at the time his nephew was killed and, instead, was several states away, only learning of the accident through a phone call from his sister. Although the record shows that the petitioner has been greatly affected by the murder of his nephew, there is no support for the petitioner’s claim that he was directly or proximately harmed by the criminal activity perpetrated against his nephew. Based on the evidence presented, the petitioner is not the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

As the petitioner did not establish that he met the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14), he has also failed to establish that he meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.<sup>1</sup> *See also U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). The petitioner is consequently ineligible for U nonimmigrant classification and his petition must remain denied.

*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.

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<sup>1</sup> In the appeal brief, the petitioner claims that USCIS did not contest that the petitioner possessed information regarding the qualifying criminal activity and that he was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity. Brief at 6-7. However, the director decided that the petitioner did not establish that he possessed information or was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity.