



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 07 2015**

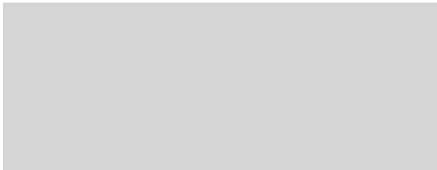
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 because the petitioner did not establish that she suffered substantial physical or mental abuse as the victim of a qualifying crime. 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;

* * *

(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 . . .; kidnapping; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

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.

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence*. Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918[.]

* * *

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

* * *

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

* * *

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 Mexico who claims to have last entered the United States on November 2, 2000 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on April 1, 2013, with an accompanying Form I-918 Supplement B. The Form I-918 Supplement B was signed on March 5, 2013, by Detective [REDACTED]. On December 5, 2013, the director issued a Request for Evidence (RFE) for the petitioner to establish that the individual who executed the Form I-918 Supplement B is the head of a certifying agency or a person in a supervisory role specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of the agency. In addition, the director requested evidence to establish that the petitioner suffered substantial physical or mental abuse as a result of qualifying activity.

On February 25, 2014, the petitioner responded with a letter from Detective [REDACTED] stating that he is a certifying official for the [REDACTED] Police Department and a declaration from the petitioner. On March 28, 2014, the director issued a second Request for Evidence for the petitioner to establish that she was a witness to the criminal activity specified in the Form I-918 Supplement B and again requesting evidence to demonstrate that she was the victim of substantial mental abuse as a result of qualifying activity. On June 9, 2014, the petitioner responded with witness statements concerning the petitioner's mental state and a letter from a treating psychotherapist. The director subsequently denied the petition because the petitioner did not demonstrate that she was a victim of substantial physical or mental abuse as the victim of a qualifying crime. The petitioner timely appealed the denial of the Form I-918 U petition.

Clamed Criminal Activity

In her declaration submitted with the Form I-918 petition, the petitioner stated that, on [REDACTED] 2012, she and four children were inside her house when she heard gunshots outside. She ran to the window to move one of the children who was looking outside and saw a man shooting a gun. She stated that she saw this man shoot another man.

The Form I-918 Supplement B submitted with the Form I-918 U petition states that on [REDACTED] 2012, the petitioner witnessed one man shoot at a person outside her home. The Form I-918 Supplement B further states that the petitioner assisted in the prosecution and identified the suspect in a photo line-up and testified at the resulting criminal hearing.

Analysis

We review these proceedings *de novo*. A full review of the record establishes no error in the director's decision.

The regulation at 8 C.F.R. § 214.14(a)(14) defines "victim of qualifying criminal activity" as an alien who is directly and proximately harmed by 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). The director found that, because the petitioner was inside of her home during the shooting, she was not in direct and proximate harm. In her appellate brief, counsel asserts that the petitioner was a bystander victim of the murder of the man outside of her home, and she is suffering from PTSD as a result of the incident. She claims that the petitioner "observed [a man] kill a person in front of her home," and she assisted the [REDACTED] Police Department in apprehending the killer. The evidence shows that the petitioner was present at the time of the murder and witnessed a man's death outside of her home. The Form I-918 Supplement B and other relevant evidence confirms that murder, a qualifying crime, was investigated and prosecuted and that the petitioner possessed information about the murder and was helpful to the police in the investigation and prosecution of the qualifying crime. The petitioner has, therefore, established that she is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act. That portion of the director's decision finding otherwise is withdrawn.

The petitioner states she suffers from sleep deprivation, anxiety, paranoia, and physical manifestation of the PTSD in the form of bed-wetting. In a statement dated January 22, 2014, the petitioner states that the criminal events have led her to be anxious and worry that someone will take revenge on her; she also cries a lot. She stated that appearing in court intensified her nervousness, because the killer could see what she looked like. She stated that she has

nightmares that the killer sends someone to kill her or her family and that she sometimes wets the bed.

The petitioner submitted a letter from psychotherapist [REDACTED] who stated that he provided treatment “brief[ly]” to the petitioner, seeing her for four sessions of 50 minutes each with the first two sessions composed of “fact gathering and doing a history on the case.” Mr. [REDACTED] letter indicates that the petitioner “claim[s] to be suffering from anxiety and sleep deprivation related to the witnessing of a homicide two years ago.” The letter states that the petitioner was diagnosed with PTSD, but contains few details about the petitioner, her history, any previous mental issues, or the relationship between the criminal event she witnessed and Mr. [REDACTED] diagnosis. As a result, the petitioner has failed to demonstrate that she suffered substantial mental abuse as a result of being the victim of a qualifying crime as required by subsection 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner established that she was the victim of a qualifying crime or criminal activity, but failed to establish that she suffered resultant substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

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.