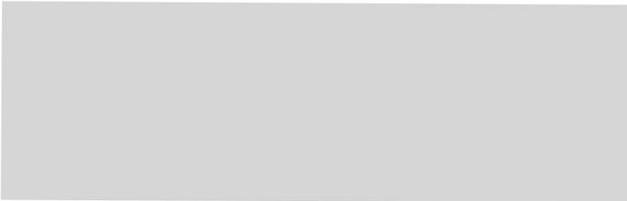


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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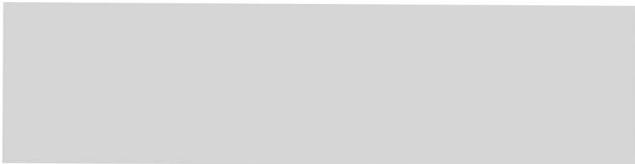


Date: **MAR 24 2015** Office: VERMONT SERVICE CENTER FILE:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is 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 did not establish that she was the victim of qualifying criminal activity, that he suffered substantial physical or mental abuse as a result of her victimization and consequently did not meet any of the eligibility criteria for U classification. On appeal, counsel submits a brief, and copies of documents already included in the record.

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: . . . sexual assault; . . . 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.

(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. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(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. . . .

(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. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

The AAO conducts 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 last entered the United States on August 1, 2000, without being inspected, admitted, or paroled. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 22, 2013. On March 6, 2014, the director issued a Request for Evidence (RFE) to obtain, in part, evidence relating to the petitioner's victimization and resultant substantial physical or mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts that she is an indirect victim of her niece's sexual assault because of the guardianship relationship that existed at the time the crimes occurred, or in the alternative, a direct victim as a bystander or witness to her niece's sexual assault because she provided valuable information to law enforcement officials in their investigation of the crime.

Analysis

The relevant evidence submitted by the petitioner and on appeal fails to establish that the petitioner was a direct or indirect victim of qualifying criminal activity as stipulated at 8 C.F.R. § 214.14(a)(14).

While filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B signed by [REDACTED] Director, Victim Witness Unit in the District Attorney's Office, [REDACTED] Georgia (certifying official), on October 18, 2012. At Part 3.1 Director [REDACTED] identified the crime as sexual assault and listed the statutory citation for the crime at Part 3.3 as aggravated child molestation and statutory rape under the Official Code of Georgia (OCGA) § 16-6-4 and Incest under OCGA § 16-6-22 as the criminal activities that were investigated or prosecuted. The certifying official also indicated at Part 3.1 "other: witness only." At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, and Part 3.6, which ask for a description of any known or documented injury to the petitioner, the certifying official referred to the attached criminal warrant, grand jury document, court documents and other law enforcement documents related to the investigation and prosecution of the investigated criminal activity. The documents indicate that the petitioner's niece was the victim of child molestation and sexual abuse by her father. Her niece's father was prosecuted and convicted of aggravated sexual battery, rape, child molestation, aggravated sodomy and incest.

The petitioner also submitted a personal statement in which she recounted that from 2004 to 2007 her niece was sexually assaulted and abused by her biological father, the petitioner's brother-in-law. During the period in question, the petitioner lived with her brother-in-law, her niece and her niece's other siblings. When she found out about the abuse in 2007, she was shocked because she did not know that the abuse was taking place. Initially, she was afraid to report the abuse for fear of deportation. However, her nephew reported the abuse to the school authorities and her brother-in-law was arrested, prosecuted and jailed. The petitioner stated that she provided information to law enforcement officials in their investigation and prosecution of the crime. After her brother-in-law was arrested, the children were removed from the home and sent to foster families. She petitioned for and was granted guardianship of the children, first as a temporary legal guardian in December 2007 and as their permanent legal guardian in 2010. The petitioner states that she has been directly affected by the trauma of the crime; that she feels depressed, angry and very upset about what happened; and that she feels guilty for not knowing the abuse was taking place.

In her denial letter, the director cited the regulatory definition of indirect victim at 8 C.F.R. § 214.14(a)(14)(i), and stated that the petitioner did not meet the definition because she was the aunt and not the parent of the victim. The director determined further that the petitioner did not suffer direct and proximate harm as a bystander to her niece's sexual assault.

On appeal, the petitioner states that she is an indirect victim because she was the guardian of her niece and her siblings at the time the crimes were committed. The regulation does not include guardians in its definition of "victim of qualified criminal activity" at 8 C.F.R. § 214.14(a)(14). In cases where the direct victim is under 21 years of age, the regulation only includes as indirect victims the parents and unmarried siblings under the age of 18, where the direct victim is incompetent or incapacitated, and unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. 8 C.F.R. § 214.14(a)(14)(i). Section 101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2) provides the statutory definition of parent for immigration purposes. Under this provision, the term "parent," "father," or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). In this case, the petitioner has not demonstrated the requisite parental relationship by one of the methods set forth at section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). Thus, the petitioner does not qualify as an indirect victim based on her familial relationship to her niece. Furthermore, the certifying official did not certify that the petitioner was the victim of any qualifying crime that was investigated or prosecuted, but instead noted that the petitioner was a "witness only."

On appeal, the petitioner also claims that she is a direct victim of the sexual assault of her niece as a bystander or witness to the crime because she was present in the house during the years the crimes were committed, provided valuable information to law enforcement authorities in their investigation of the crime and has suffered "substantial mental harm" as a result of the crimes. The petitioner states that she has been evaluated by a licensed Professional Counselor who confirmed that she was emotionally and psychologically impaired by the traumatic incidents. The counselor diagnosed the petitioner with Adjustment Disorder with Anxiety and Depressed Mood. The petitioner further states that she is the only parent the victim and her siblings have, that the entire family have been receiving therapy and that the children would be devastated to lose her and would be unable to provide for themselves.

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 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). 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 cannot be considered a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against her niece. We are sympathetic to the challenges that the petitioner has faced raising her niece and nephews, as well as becoming their legal guardian; however, the facts in this matter do not demonstrate her victimization under the applicable 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

As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she suffered any resultant substantial physical or mental abuse as required under subsection 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 and the appeal must be dismissed.

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