



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF O-M-G-

DATE: NOV. 9, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides 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: . . . murder; . . . 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 definitions:

(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.

....

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 certification must state that: . . . the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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

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sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States in 2000 or 2001, without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on December 24, 2013. He also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive his grounds of inadmissibility. The Director issued a request for evidence (RFE) that the Petitioner is a victim of qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 U petition and the accompanying Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The Petitioner timely appealed the denial of the Form I-918.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief on appeal, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Lieutenant, [REDACTED] Police Department, on October 28, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as "sex conduct w/minor" in the space indicating "other." In Part 3.3, the certifying official referred to Arizona Revised Statutes sections 13-1405 sex conduct with minor and 13-1410 child molestation. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the Petitioner "is listed as a witness in the investigation and needed for prosecution" for acts disclosed to the Petitioner by his cousin. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that there "were no documented physical injuries noted for the victim, but it was requested that she have mental health therapy due to the sexual abuse."¹ The certifying official further stated in Part 4 that the Petitioner is the primary witness in the investigation and that he is needed for the successful prosecution of the suspect.

In his personal statements, the Petitioner explained that his cousin related to him that their uncle had raped her on more than one occasion. He described confronting his uncle who then threatened to harm the Petitioner. The Petitioner recounted that he told his cousin's mother what happened and that she then kicked their uncle out of the house. The Petitioner stated that his mother and aunt reported the incident to the police the next morning and that his uncle disappeared soon after and has

¹ The victim referenced by the certifying official appears to be the Petitioner's cousin and not the Petitioner.

not been located. The Petitioner further stated that he is afraid that his uncle will retaliate against him. The Petitioner's mother stated in her declaration that she fears that her brother will harm her or her family for reporting the rape of her niece to the police.

On appeal, the Petitioner asserts that his fear and emotional distress is a severe reaction to the rape of his cousin and that he qualifies as an indirect victim. While it is clear that the Petitioner has been affected by the sexual assault of his cousin, 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 or is incompetent or incapacitated, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried and under the age of 18 siblings of victims under 21 years of age. 8 C.F.R. § 214.14(a)(14)(i). Here, the record does not demonstrate that the Petitioner qualifies as an indirect victim of the criminal activity under the regulations based on his familial relationship to his cousin. *Id.*

Furthermore, the record does not establish that the Petitioner qualifies as a bystander victim because he has not established that he suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. The relevant regulatory definition of "victim" was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). *U.S. Dep't of Justice, Office for Victims of Crime, Attorney General Guidelines for Victim and Witness Assistance*, 8-9 (2011) (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 Interim 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. *Id.* 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 of the sexual assaults and only learned of them when he was told about the incidents. There is no support for the Petitioner's claim that he was directly or proximately harmed by the criminal activity perpetrated against his cousin.

In addition, the Petitioner asserts on appeal that he is a victim of witness tampering and obstruction of justice which are qualifying criminal activities. However, the certifying official did not certify that the Petitioner was a victim of witness tampering or obstruction of justice, or that these crimes had been detected, investigated and/or prosecuted. 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. *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 the petition remains denied.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of O-M-G-*, ID# 14868 (AAO Nov. 9, 2015)