



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

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

MATTER OF F-P-M-

DATE: NOV. 17, 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. 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 The Director's decision will be withdrawn and the matter remanded for entry of a new decision.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, based on a finding that the Petitioner was not a victim of qualifying criminal activity. On appeal, the Petitioner submits a brief and additional evidence.

I. 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; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification provide the following definition of a victim at 8 C.F.R. § 214.14(a):

(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.

The regulatory definition of a victim was drawn in large part from the *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (rev. May 2012) (AG Guidelines). See U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (Interim Rule) (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. AG Guidelines at 8-9. The AG Guidelines further explain, "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. However, the Interim Rule clarifies that while U.S. Citizenship and Immigration Services (USCIS) may find certain petitioners to be eligible for U nonimmigrant status as a result of having been bystanders to a violent crime, only those "who suffer unusually direct injuries as victims" will qualify. Interim Rule, 72 Fed. Reg. at 53016-17.

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The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and 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. 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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who entered the United States in June 1991 without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on September 16, 2013. On June 23, 2014, the Director issued a request for evidence (RFE) that the Petitioner suffered direct and proximate harm as the result of being the indirect victim of qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility and denied the Form I-918. The Director found that the Petitioner did not qualify as an indirect victim of the crime as he is not related to the victim and that he did not qualify as a bystander victim because he did not suffer unusually direct and egregious harm as a result of the crime. Accordingly, the Director denied the petition. The Petitioner filed a timely appeal.

III. CERTIFIED CRIMINAL ACTIVITY

The Petitioner submitted a Form I-918 Supplement B, signed by [REDACTED] Assistant Chief of Police, [REDACTED] Arizona Police Department (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of murder and witness tampering. At Part 3.3, the certifying official listed "Homicide, Murder" as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5 of the Form I-918 Supplement B, the certifying official stated that the Petitioner "witnessed [the perpetrator] shoot and kill a man by shooting him several times, including in the head area."

IV. VICTIM OF QUALIFYING CRIMINAL ACTIVITY

In his brief on appeal, the Petitioner asserts that the Director erred in finding that he was not a bystander victim and did not suffer direct, unusual, and egregious harm. The Petitioner notes that, in addition to witnessing the murder of the victim, he was also placed in proximate harm by the perpetrator, as recognized by the grand jury in its indictment dated [REDACTED] 1993, in which the grand jury charged the perpetrator with endangering the life of the Petitioner, although the trial court jury ultimately found that the perpetrator was not guilty of that charge.

The Petitioner stated in his August 28, 2013 statement that he witnessed the entire murder, having been alerted to the ongoing altercation outside his door by the first shotgun blast fired by the perpetrator. The Petitioner states that, following the first shotgun blast, which broke car windows but did not harm anyone, he went outside to see the perpetrator, who is a distant relative of the

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Petitioner, aiming at the victim, who was Petitioner's neighbor and co-worker, as well as a distant relative. The Petitioner saw the perpetrator shoot the victim in the legs and then again in his head. The Petitioner went to the victim to see if he could render first aid, only to discover that the victim was missing part of his skull and was dead. The perpetrator fled to Mexico soon after the murder but the Petitioner reported to the police two years after the murder that the perpetrator had returned to Arizona and he testified in court as a witness to the murder. He states that he continues to be in fear of the perpetrator because of threats issued from friends of the perpetrator that they will kill him and because the perpetrator may soon be released from prison.

The Petitioner submitted a letter from [REDACTED] a licensed professional counselor, who diagnosed the Petitioner with Post Traumatic Stress Disorder. [REDACTED] noted that the Petitioner was only [REDACTED] years old at the time of the murder and that he "was in shock and not able to work for a couple of days. He also needed to be moved to a different location at work because it was impossible for him to perform his job . . . [due to] flashbacks." [REDACTED] indicated that the Petitioner continues to live in fear because of the threats issued by the perpetrator and his friends and that he believes that they could follow through with the threats as they know where he lives. She noted that the Petitioner did not seek treatment immediately because he did not know what help was available and had limited financial means. As a result of the perpetrator's pending release from prison, the Petitioner's symptoms have worsened and he was prescribed medication for anxiety and depression in July 2014.

The record demonstrates that the Petitioner suffered severe and ongoing psychological trauma as a result of witnessing the murder. The Petitioner was acquainted with both the perpetrator and the victim and has distant family ties to each family as well. In addition, the Petitioner was quite young at the time of the murder and has suffered ongoing victimization through the issuance of threats from the perpetrator's friends. The Petitioner is also distantly related to the perpetrator, so his residence is not a secret from the family. Upon the Petitioner's brother's return to Mexico, he was harassed by relatives of the perpetrator who mistook him for the Petitioner.

The preponderance of the evidence demonstrates that the Petitioner suffered unusually direct emotional harm as a result of the murder of the victim. *See* Interim Rule, 72 Fed. Reg. at 53016-17. Therefore, the Petitioner has established that he was a bystander victim of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. The Director's contrary conclusion will be withdrawn.

V. ADMISSIBILITY

The regulation at 8 C.F.R. § 214.1(a)(3)(i) requires that all nonimmigrants establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in order to waive a ground of inadmissibility. In this case, the Petitioner filed the required Form I-192, which the Director denied

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on the basis that the Petitioner was ineligible for the waiver of inadmissibility since his underlying Form I-918 had been denied. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3). However, because the grounds for denial of the Petitioner's Form I-918 have been overcome, we will return the matter to the Director for reconsideration of the Form I-192.

VI. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369. Here, the Petitioner has met that burden.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of F-P-M-*, ID# 14771 (AAO Nov. 17, 2015)