



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

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

MATTER OF R-M-V-

DATE: NOV. 23, 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, 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: . . . murder; felonious

assault . . . 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. 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[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines physical or mental abuse as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

We conduct appellate review on a *de novo* basis. The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole

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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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on or about February 15, 2002, without inspection, admission, or parole. On November 26, 2013, the Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status. On September 30, 2014, the Director issued a request for evidence (RFE) to which the Petitioner submitted a timely response. On March 13, 2015, after considering the evidence of record, including the response to the RFE, the Director denied the Form I-918 and the Petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner submits a brief, additional evidence, and copies of previously submitted evidence.

## III. ANALYSIS

In her denial decision, the Director determined that the Petitioner did not meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act (substantial physical or mental abuse, possession of information, helpfulness and jurisdiction over the criminal activity) because he was not the victim of a qualifying crime. Based on the evidence in the record, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918. The Petitioner submitted a personal statement in which he described how he was nearby when two individuals shot two people, one of whom died. The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] of the Youth and Family Services of the [REDACTED] California, Police Department (certifying official) with his Form I-918. At Part 3.1, the certifying official identified the criminal activity of which the Petitioner was a victim as "attempt to commit any of the named crimes" and "other: bystander." He did not list the statutory citation for any crime at Part 3.3. At Part 3.5, the certifying official described the involvement of the Petitioner in the criminal activity being investigated or prosecuted as being a witness to a shooting and killing. In response to the RFE, the Petitioner submitted a second Form I-918 Supplement B signed by the same certifying official who, at Part 3.1, listed "murder" and "other: bystander victim." At Part 3.3, the certifying official listed the statutory citation for the crime as California Penal Code section 187 (murder), and at Part 3.6 listed the injury to the Petitioner as Post Traumatic Stress Disorder (PTSD).

### A. The Petitioner Does Not Qualify as the Direct Victim

While it is clear that the Petitioner has been affected by the shooting, he does not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). The record does not show that he suffered direct and proximate harm as a result of witnessing the murder. As the Petitioner admits in his statements, he *witnessed* the murders – he was not the direct victim of the murders, as he was not the individual who was shot and killed. In cases involving murder, the regulation only

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contemplates indirect victims to be immediate relatives of the murdered victim. 8 C.F.R. § 214.14(a)(14)(i).

B. The Petitioner Does Not Qualify as a “Bystander Victim”

The Petitioner asserts that although he was not the person murdered, he qualifies as a “bystander victim.” He cites the regulatory definition of victim and 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. The rule further clarifies that:

USCIS does not anticipate approving a significant number of applications from bystanders, but 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. An example of an unusually direct injury suffered by a bystander would be a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.

*U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. at 53016-17.

The evidence shows that the Petitioner witnessed the shooting and death of the murdered individual, as well as the shooting of the other passenger in the car from a distance. In his affidavits, the Petitioner does not indicate that he was physically harmed but that since the incident, he has been anxious, worries about his safety, and experiences panic attacks, headaches and nightmares. [REDACTED] and therapist [REDACTED] both diagnosed the Petitioner with PTSD and [REDACTED] also found the Petitioner to be suffering from anxiety and depression. [REDACTED] noted that the incident reminded the Petitioner of a previous event in which the Petitioner saw one man shoot another and then run towards him. Although we acknowledge the harm the Petitioner, [REDACTED] and [REDACTED] describe, it is the type of harm a witness of a violent crime would normally report rather than an unusually direct injury to the Petitioner. As noted in the Interim Rule, for a bystander to qualify as a direct victim, the harm would need to be as unusual and severe as a pregnant bystander suffering a miscarriage, for example. Based upon our discretionary determination, the injury described in this case does not demonstrate that the Petitioner has suffered unusual and severe harm. The Petitioner has, therefore, not shown that he is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### IV. INADMISSIBILITY

Furthermore, the record shows, and the Petitioner admits, that he entered the United States without inspection, admission, or parole, and he is therefore inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 in order to waive any ground of inadmissibility. As the Petitioner's Form I-192 was denied, he has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3).

#### V. CONCLUSION

The Petitioner has not established that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act and described in 8 C.F.R. § 214.14(a)(14). Because the Petitioner did not establish that he was the victim of qualifying criminal activity, he cannot meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. Furthermore, the Petitioner is inadmissible to the United States and his ground of inadmissibility has not been waived. The Petitioner is consequently ineligible for U nonimmigrant classification and his 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-M-V-*, ID# 14556 (AAO Nov. 23, 2015)