



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

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

MATTER OF D-C-E-

DATE: OCT. 6, 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.

The Director denied the petition because the Petitioner did not establish that he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity. On appeal, the Petitioner submits a brief.

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: . . . manslaughter; murder; . . . 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. § 214.14(a) provide specific 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. . . ;

(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. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(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

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his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

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 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."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States on June 16, 1998, 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 August 30, 2013. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive his grounds of inadmissibility. The Director denied the Petitioner's Form I-918 for not establishing that the Petitioner is a victim of qualifying criminal activity and that he suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity. The Petitioner filed an appeal asserting that he suffered substantial mental abuse as a result of being a victim of a qualifying crime.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief, does not establish that the Petitioner suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity.

The Form I-918 Supplement B that the Petitioner submitted was signed by Commander/Violent Crimes Investigations, [REDACTED] Police Department, [REDACTED], Minnesota (certifying official), on August 12, 2013. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 of Form I-918 Supplement B as felonious assault and, in Part

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3.3, the certifying official refers to the Minnesota statute § 609.222 (assault with dangerous weapon) as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that, after a shooting, the Petitioner witnessed the suspects enter into an apartment next door to his and that he helped the police by giving a description of the suspects. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner did not suffer physical harm but did suffer substantial emotional harm. While assault with a dangerous weapon under Minnesota law can constitute a felonious assault and, hence, a qualifying crime, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

The Petitioner submitted two declarations in which he described the events that occurred on [REDACTED], 2003. He recounted hearing gunshots in the street outside of his apartment and that he and his girlfriend dropped to the floor. The Petitioner stated that he looked out of the peephole and saw three people enter an apartment across from his and that one of them was holding a silver gun. The Petitioner stated that, when the police arrived, he told them everything that happened and what he witnessed. The Petitioner described having nightmares as a result of the incident and being afraid that the perpetrators of the crime would find out that he provided a statement to the police. He stated that he continues to be affected today by that incident and is distrustful of people. On appeal, the Petitioner submits a brief reasserting that the conduct of the persons who perpetrated the crime was “severe and extremely dangerous” and that, as a result, the Petitioner has suffered and continues to suffer from mental, emotional, and psychological harm. He states that evidence submitted demonstrates the negative psychological effect on him as a result of witnessing a felonious assault.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1). We consider “any credible evidence” relevant to the petition. *See* Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). However, in this particular matter, the Petitioner has not adequately demonstrated that the one incident certified resulted in permanent or serious harm to his physical or mental soundness under the pertinent definition of “substantial abuse” and relevant factors at 8 C.F.R. §§ 214.14(a)(8); (b)(1). Consequently, as the record is presently constituted, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial physical or mental abuse resulting from qualifying criminal activity.

In addition, the Petitioner does not meet the requirements under the Act and regulations to be considered a “bystander victim” 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). Here, the evidence shows that the Petitioner was in his apartment when he heard shots fired on the street outside of his apartment building, he looked through a peephole in his apartment door and witnessed several people enter a neighboring apartment, and he subsequently gave a full statement to the police. However, although the record shows that the Petitioner has been fearful of retaliation for speaking to the police, there is no support for the Petitioner’s claim that he was directly or proximately harmed by the criminal activity.

Although the certifying official indicated at Part 4.5 of Form I-918 Supplement B that the Petitioner “may qualify as an indirect victim”, the Petitioner does not fall within the class of persons who may be indirect victims under the regulation at 8 C.F.R. § 214.14(a), which provides that the spouse and children of the direct victim, or the parents and unmarried siblings under 18 years of age of a direct victim who is under 21 years of age, will also be considered victims of qualifying criminal activity if the direct victim is deceased due to murder or manslaughter. 8 C.F.R. § 214.14(a)(14)(i). In the instant matter, the direct victim of the criminal activity was apparently not related to the Petitioner and we have no indication that the direct victim died as a result of the attack.

As the Petitioner did not establish that he suffered substantial physical or mental abuse resulting from a qualifying criminal activity, 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 D-C-E-*, ID# 14380 (AAO Oct. 6, 2015)