



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

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

MATTER OF B-L-A-M-

DATE: OCT. 19, 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, determining that the Petitioner had not established that she was a victim of qualifying criminal activity, as she has not demonstrated that she suffered direct and proximate harm as a result of the commission of the qualifying crime. On appeal, the Petitioner submits a brief statement from counsel.¹

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,

¹ Although the Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that a brief and/or additional evidence would be submitted within thirty days of the filing of the appeal, we have not received either as of the date of this decision.

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, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

* * *

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."

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II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Mexico, claims to have last entered the United States in February 1999, without admission, inspection or parole. She filed the instant Form I-918, along with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on November 4, 2013. The Director subsequently issued a request for evidence (RFE) establishing that the Petitioner suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director accordingly denied the Form I-918, and the Petitioner timely appealed. On appeal, the Petitioner asserts that she is a victim of qualifying criminal activity because she suffered direct and proximate harm as a result of the commission of such criminal activity.

A. Claimed Criminal Activity

In her written statement, the Petitioner recounted the circumstances of her younger brother's murder when he was [REDACTED] years old. She stated that her brother was at a pizza parlor with their sister and a friend when someone "shot up the place," killing her brother in what appears to have been a case of mistaken identity. Her brother died in the ambulance on route to the hospital. The Petitioner, who was three months pregnant, stayed home when her parents received word about her brother. She described suffering tremendously at her brother's passing, as she and her minor daughter were extremely close to him. The Petitioner indicated that she has trouble sleeping and have been having headaches that are not relieved with medication. Although she believed she and her family require counseling, she has been unable to do so due to her work schedule and having to care for her two small children.

The Form I-918 Supplement B that the Petitioner submitted was signed on October 24, 2013 by [REDACTED] First Assistant State's Attorney, [REDACTED] State's Attorney's Office (certifying official). The certifying official checked the box marked "Murder" in Part 3.1, which inquires about the criminal activity of which the Petitioner was a victim. At Part 3.3, he listed 720 Ill. Comp. Stat. § 5/9-1(a)(1)-(3), corresponding to the offense of first degree murder, as the relevant criminal statute for the charge that was investigated or prosecuted. At Part 3.5, which asks for a description of the criminal activity being investigated, the certifying official stated that the criminal activity investigated was the murder of the Petitioner's brother. In response to Part 3.6, inquiring about the injuries to the victim, she stated the Petitioner's brother was murdered on [REDACTED] 2012.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

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The Petitioner, who was [REDACTED] years old at the time of her brother's murder, has not established that she is a victim of qualifying criminal activity. Pursuant to the regulation at 8 C.F.R. § 214.14(a)(14), a "victim of qualifying criminal activity" is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. 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). The record here indicates that the direct victim of the criminal activity on [REDACTED] 2012 was the Petitioner's now deceased minor brother. Although the Petitioner is the sibling of a direct victim, who was under 21 years of age at the time of the criminal activity and is deceased as a result of such activity, the Petitioner does not qualify based on her familial relationship to him because she was not under 18 years of age at the time of the qualifying criminal activity, as required by regulation. *Id.* She therefore does not qualify as a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14)(i), based on her status as the direct victim's sister.

The record also does not demonstrate that the Petitioner suffered direct or proximate harm as a result of the commission of the qualifying criminal activity, and, consequently, she does not qualify under the general definition of the term "victim of qualifying criminal activity" under 8 C.F.R. § 214.14(a)(14). On appeal, the Petitioner asserts that the term "direct and proximate harm" does not require that she have been present at the time of the qualifying criminal activity, and contends that the significant emotional harm she suffered as a result of the acts of the perpetrator, including post-traumatic stress disorder, is sufficient to establish that she suffered direct and proximate harm. 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 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 (emphasis added). The record here indicates that the Petitioner was not present at the time, or the scene, of her brother's murder and was not a witness to that crime. In addition, the emotional harm the Petitioner described suffering is a natural result of losing a family member, but such harm is an indirect result of the underlying criminal offense and does not fall within the meaning of "direct or proximate harm."

The AG guidelines specifically indicate "that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims[,] but provide [] discretion to treat as victims bystanders who suffer unusually direct injuries as victims." *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. at 53016 (citing the AG Guidelines). Thus, even bystanders to a qualifying criminal activity must demonstrate "unusually direct injuries" to qualify as a victim of qualifying criminal activity. Here, the Petitioner was not a bystander during the commission of the qualifying crime and was not present in the immediate aftermath. While we empathize with the

Petitioner's loss, she has not demonstrated that she was directly and proximately harmed as a result of the commission of qualifying criminal activity. Accordingly, upon review of the record, the Petitioner has not established that she is a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14).

IV. CONCLUSION

The Petitioner has not demonstrated that she is a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. Consequently, the Petitioner does not meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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 B-L-A-M-*, ID# 13993 (AAO Oct. 19, 2015)