



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

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

MATTER OF S-O-C-L-

DATE: OCT. 22, 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 The Director's decision will be withdrawn and the matter remanded for entry of a new decision.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 (ii);

(II) the alien . . . possesses information concerning criminal activity described in clause (ii);

(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 (ii); and

(IV) the criminal activity described in clause (ii) 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 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 U.S. Citizenship and Immigration Services (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 filed the Form I-918 on October 21, 2013. The Director issued a request for evidence (RFE) that the Petitioner suffered substantial harm as the result of being the victim of qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient. The Director concluded that the Petitioner was not an indirect victim of the qualifying criminal activity because he did not have a qualifying stepparent-stepchild relationship with the direct victim, who was the daughter of the Petitioner's wife and was [REDACTED] years old at the time the Petitioner married the victim's mother. The Director also found that the Petitioner 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] Youth and Family Services Division, [REDACTED] Police Department, [REDACTED] California (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. At Part 3.3, the certifying official cited Cal. Penal Code § 187 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 "was the bystander victim of the murder of his wife's daughter: [REDACTED]. [REDACTED] was shot and murdered outside of their apartment. When [the Petitioner] walked into the hallway of his apartment building, he saw [REDACTED] lying on the floor in a pool of blood."

IV. VICTIM OF QUALIFYING CRIMINAL ACTIVITY

The preponderance of the evidence demonstrates that the Petitioner suffered unusually direct emotional harm as a result of the murder of [REDACTED]. 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.

In his brief on appeal, the Petitioner asserts that the Director erred in finding that the Petitioner was not a bystander victim and did not suffer direct, unusual, and egregious harm. The Petitioner notes that, although he did not witness the murder of [REDACTED], he discovered her body in the hallway of his apartment building after she was murdered. He contends that, although he was not the stepfather

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of [REDACTED] for immigration purposes because he married her mother after [REDACTED] turned 18, he considered her his daughter and suffered severe emotional trauma as a result of discovering her body and her bloody handprints in the hallway of his apartment building. The Petitioner also alleges that the murder of [REDACTED] increased his fear of the suspected perpetrator, who had previously harassed and threatened the Petitioner.

The Petitioner notes that he received counseling for months following the murder and that his therapist diagnosed him with post-traumatic stress disorder, anxiety, and depression. He further contends that the Director misinterpreted a mental health evaluation he submitted in response to the RFE, which indicated that the Petitioner suffered from severe post-traumatic stress disorder; the Petitioner states that the Director mis-labeled his post-traumatic stress disorder as “acute” rather than “severe.” The Petitioner attests that the depression, anxiety, and post-traumatic stress he suffered as a result of the murder of [REDACTED] “resulted in severe harm to [the Petitioner’s] daily functioning and mental soundness.”

Additionally, the Petitioner asserts on appeal that he is considered a victim under California law, and has received victim compensation from the state of California.

The Petitioner further asserts in his appeal brief that the Director misinterpreted the AG Guidelines by requiring that an individual be physically present during the commission of a crime in order to qualify as a victim. The Petitioner cites the AG Guidelines at Article III.D.2, which states:

In the absence of physical or pecuniary harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence, or, if not present, received information about a violent act attempted against him or her. In all other cases, emotional harm should not be presumed in the absence of physical or pecuniary harm, but rather the existence of cognizable emotional harm should be determined on a factual, case-by-case basis.

According to the Petitioner, this portion of the AG Guidelines instructs us presume that he suffered emotional harm because, although he was not present during the commission of the crime, he saw “the end result of the violent act.” However, this portion of the AG Guidelines specifically notes that presumption of emotional harm is appropriate where an individual who was not present “received information about a violent act attempted *against him or her*.” (Emphasis added). This does not apply to the Petitioner’s case, as the murder of [REDACTED] did not involve a violent act attempted against the Petitioner. Nevertheless, although we cannot presume emotional harm in the Petitioner’s case, the evidence of record demonstrates that the Petitioner suffered unusually direct and severe emotional harm as a result of the murder of [REDACTED]

In his personal declaration, submitted with the Form I-918 and again on appeal, the Petitioner recalled that, on the night [REDACTED] was murdered, she told the Petitioner that she had an argument with her ex-boyfriend, F-M¹, and that he had threatened to kill her. The Petitioner stated that, earlier

¹ Name withheld to protect the individual’s identity.

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that week, F-M- had arrived at the Petitioner's home and threatened to hurt the family, and that F-M- had also threatened the family on previous occasions. The Petitioner recounted that, when he told F-M- to leave his home, F-M- slammed him against the wall. In light of the recent threats by F-M-, the Petitioner advised [REDACTED] to stay home that night, but she decided to go out. The Petitioner claimed that, at approximately 3:00 a.m. the next morning, he awoke to loud sounds in the apartment building hallway, as if "someone was kicking a cardboard box." The Petitioner checked on his family and looked out the window, but did not see any problems, so he returned to bed. According to the Petitioner, he then awoke an hour or two later to "a loud piercing scream, the sound of police radios, a woman screaming in Spanish regarding a dead body, sirens and people crying in the apartment building hallway. He stated that he opened the door to his apartment and found [REDACTED] "lifeless body lying in a pool of blood. [He] also saw [REDACTED] bloody fingerprints all over the walls." He asserted that he fell to the ground and wept, and that he felt guilty and cowardly for not opening the door when he heard sounds in the hallway earlier in the night. The Petitioner indicated that, after discovering [REDACTED] body, he felt unable to breathe, could not stop crying, and "felt an indescribable pain in [his] chest." He also expressed relief that none of the bullets had gone through the "paper thin" walls that separated their apartment, where he and his family were sleeping, from the hallway where [REDACTED] was shot. He also stated that he and his family feared that F-M- would return to harm them, so they spent several nights moving between hotels. The Petitioner also described the ongoing effects of the incident on his life, stating that he "cannot get the images of blood and [REDACTED] body out of [his] mind," has nightmares about [REDACTED] and F-M-, and feels constant fear that F-M- is watching him and his family. The Petitioner noted that the police had been unable to apprehend F-M-.

The Petitioner also submitted a letter from [REDACTED] clinical case manager and social worker at [REDACTED] regarding the Petitioner's mental health. [REDACTED] indicated that the Petitioner began counseling sessions with her on [REDACTED], 2012, two days after the murder of [REDACTED] and had attended 42 hours of therapy since that date. [REDACTED] indicated that the Petitioner had "vivid images" in his mind of the body of [REDACTED] at the front door to his apartment, and that he and his family continued to live in fear of F-M-. [REDACTED] also recounted that, prior to the murder of [REDACTED] the Petitioner had witnessed ongoing threats and violent behavior by F-M- toward [REDACTED] the Petitioner, and his family, including "signs of cutting [REDACTED] throat, signs of using a gun, verbal threats of killing everybody, physical abuse to . . . [REDACTED] stones thrown at their windows, slammed doors, and physical assault upon [the Petitioner] [on] his wedding day." According to [REDACTED] as a result of the violent death of [REDACTED] and the "severe mental abuse and psychological and emotional harm to the family for an extended period of time" by F-M- prior to the murder, the Petitioner suffered "significant, chronic psychological trauma." [REDACTED] diagnosed the Petitioner with post-traumatic stress disorder, depression, and anxiety, and stated that the Petitioner felt "bombarded and overwhelmed by intrusive and distressing thoughts/images," experienced ongoing and extreme fear, and had physical symptoms.

Additionally, the Petitioner submitted with his RFE response a psychological evaluation from [REDACTED] dated August 26, 2014. The evaluation indicated that the Petitioner was in "a semi-permanent state of anxiety and foreboding which has impacted his functioning

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significantly.” The evaluation noted that the Petitioner and his wife have custody of the son of [REDACTED] and F-M-, and that they fear F-M- will return to hurt them or their grandson. According to the evaluation, the Petitioner suffers from depression and severe post-traumatic stress disorder, which have interfered with his daily life.

The record demonstrates that the Petitioner suffered severe and ongoing emotional trauma as a result of [REDACTED] murder. Although [REDACTED] was not the Petitioner’s stepdaughter for immigration purposes, he considered her to be his daughter and lived in a close, familial relationship with her. [REDACTED] was [REDACTED] years old on the date she was murdered. The Petitioner and his family had already experienced threats of harm and actual violence and abusive statements from F-M-, had witnessed threats and violence against [REDACTED], and lived in fear that F-M- would act on his threats. On the night of the murder, the Petitioner awoke to loud sounds, which he later realized were the gunshots that resulted in the death of [REDACTED]. Later that morning, he awoke to screams, at which point he found the body of [REDACTED] at the front door to his apartment. Following the death of [REDACTED], the Petitioner and his wife were granted guardianship of [REDACTED] young child, of whom F-M- is the father. The Petitioner continues to fear for his safety and that of his family.

Therefore, the evidence demonstrates that the Petitioner was directly and proximately harmed by hearing the murder of [REDACTED], a close family member, and discovering her body at the front door of his apartment. He suffered “unusually direct injuries” as a bystander to this violent crime. *See* Interim Rule, 72 Fed. Reg. at 53016-17. Accordingly, the Petitioner is a victim of a qualifying crime or criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act. The Director’s conclusion to the contrary is 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 in order to waive a ground of inadmissibility. In this case, the Petitioner filed the required Form I-192, which the Director denied 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.

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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 S-O-C-L-*, ID# 14730 (AAO Oct. 22, 2015)