



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

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

MATTER OF J-A-R-R-

DATE: SEPT. 9, 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 (INA, or 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 The Director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The Director denied the petition because the Petitioner did not establish that he suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity and consequently was ineligible for U classification. On appeal, the Petitioner submits a brief and additional evidence.

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, 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, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

....

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 [U.S. Citizenship and Immigration Services (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 last entered the United States in 2001 without admission, inspection or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), on June 3, 2013. The Director subsequently issued a request for evidence (RFE) to establish that the Petitioner is a victim of qualifying criminal activity as defined by regulation and that he suffered from substantial physical or mental abuse. The Petitioner responded to the RFE with additional evidence that the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner timely appealed. On appeal, the Petitioner asserts that he is a victim of and suffered direct and proximate harm as a result of the commission of the qualifying criminal activity of murder. He further asserts that he suffers from substantial mental abuse.

A. Claimed Criminal Activity

The Petitioner, in his personal statements, detailed the circumstances of his brother's murder on the evening of [REDACTED], 2010. The Petitioner recalled seeing occupants in an unfamiliar car approach his brother, use strong language with him, and then drive farther into the apartment complex where the Petitioner and his brother, H-R-¹ lived. The Petitioner stated that H-R- followed after the car and soon after, the Petitioner received a telephone call from the Petitioner's friend stating that H-R- had been attacked and injured after being run over with a car. The Petitioner recalled seeing firemen, police and an ambulance enter the apartment complex. The Petitioner stated that he ran to where H-R- had gone and saw him on the ground being worked on by the ambulance paramedics, covered in blood and unresponsive. The Petitioner rode in the ambulance with his brother to the hospital where H-R- underwent multiple surgeries. H-R- died the following day from his injuries.

The Form I-918 Supplement B that the Petitioner submitted was signed on May 13, 2013 by [REDACTED], Assistant District Attorney, [REDACTED] District Attorney's Office, [REDACTED] North Carolina (certifying official). In Part 3.1, which inquires about the criminal activity of which the Petitioner was a victim, the certifying official checked the box "Murder". Although the certifying official failed to set forth the relevant criminal statutes at Part 3.3 corresponding to the charges that were actually investigated or prosecuted, the record contains arrest and criminal court records indicating that the incident was investigated as a murder and the perpetrators were indicted on several charges, including voluntary manslaughter and accessory after the fact to the felony of voluntary manslaughter. In Part 4.5 of the form, the certifying official stated that the Petitioner

¹ Name withheld to protect the individual's identity.

(b)(6)

cooperated with the [REDACTED] police and the District Attorney. The certifying official also stated that the Petitioner attended all of the court hearings and participated in the plea process of the defendant's prosecution.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon review, we withdraw the Director's decision to deny the petition on the stated grounds.

The Petitioner has established that he is a victim of qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act. Pursuant to the regulation at 8 C.F.R. § 214.14(a), a "victim of qualifying criminal activity" is defined as a person who is directly or proximately harmed by the commission of qualifying criminal activity. 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 qualifying criminal activity was the Petitioner's now deceased brother. The record indicates that the Petitioner does not qualify as an indirect victim under clause (i) of 8 C.F.R. § 214.14(a) based solely on his relationship to the direct victim. Although the Petitioner is a sibling of the direct victim, the Petitioner's brother was not under 21 years of age and the Petitioner was not under [REDACTED] years of age at the time of the criminal activity, as required by 8 C.F.R. § 214.14(a)(i) to qualify as an indirect victim through a sibling relationship.

A review of the record, including the evidence submitted on appeal, however, demonstrates that the Petitioner has suffered direct or proximate harm as a bystander to a violent crime and, consequently, qualifies as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a). The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance. *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 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.

The Petitioner arrived on the scene shortly after H-R- was beaten with a baseball bat and run over by a car. He witnessed his brother's unconscious and injured body covered in blood. Although H-R- was still alive at that time the Petitioner arrived, H-R- later died in the Petitioner's presence at the hospital from severe blood loss and multiple organ trauma. The Petitioner, in his affidavit and letter, provided probative details about his close relationship with H-R- and how H-R-'s death negatively affected him. The mental health assessment notes and letters from his counselors at El Futuro, Inc. further demonstrate the ongoing emotional harm the Petitioner continues to face in the aftermath of the tragedy and confirm that this harm is the 'but for' consequence of the violent trauma of his brother's murder. Dr. [REDACTED] diagnosed the Petitioner with Post-Traumatic Stress Disorder (PTSD) as a result of the circumstances surrounding H-R-'s death. Outpatient therapist [REDACTED]

(b)(6)

██████████ stated in her letter that the Petitioner “presented with symptoms of low mood, tearfulness, difficulty sleeping, panic when hearing ambulance sirens, and avoids situations where he may see a car accident or have to go to the hospital as this provokes memories and flashbacks for him.” The Form I-918 Supplement B and other relevant evidence confirms that murder, a qualifying crime, was investigated and prosecuted, that the Petitioner possessed information about the murder and was helpful to the police in the investigation and prosecution of the qualifying crime, and that the Petitioner suffered resultant substantial mental abuse. A preponderance of the evidence demonstrates that the Petitioner is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act and we withdraw the Director’s contrary determination.

IV. ADMISSIBILITY

Although the Petitioner has established his statutory eligibility for U nonimmigrant classification, the petition may not be approved because he remains inadmissible to the United States and his waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must 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. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the Director denied the Petitioner’s Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner’s Form I-192*, dated November 5, 2014. The record indicates that the Petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act, which renders inadmissible any alien present in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). The Petitioner indicated in his affidavit and letter, that he last entered the United States in 2001 without inspection, admission or parole. The Director did not assess the Petitioner’s inadmissibility and denied his waiver request based solely on the denial of the Petitioner’s Form I-918 U petition. Because the Petitioner has overcome this basis for denial on appeal, we will remand the matter to the Director for reconsideration of the Petitioner’s Form I-192 waiver application.

V. CONCLUSION

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). Here that burden has been met as to the Petitioner’s statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the Petitioner remains inadmissible to the United States and his waiver application was denied. Because the sole

basis for denial of the Petitioner's waiver application has been overcome on appeal, the matter will be remanded to the Director for further action and issuance of a new decision.

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 the AAO for review.

Cite as *Matter of J-A-R-R-*, ID# 13418 (AAO Sept. 9, 2015)