



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

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

MATTER OF M-V-P-S-

DATE: SEPT. 15, 2015

MOTION TO REOPEN 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 finding that the Petitioner did not establish that she was the victim of qualifying criminal activity. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on motion to reopen. The motion will be denied.

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 his or her petition is based, and since the initiation of cooperation, has not refused or failed

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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 in 1999 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 July 17, 2012. She also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive her 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. We dismissed the Petitioner's appeal on February 19, 2015, affirming the Director's decision, and she timely filed this motion to reopen.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief and evidence on motion, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

The Form I-918 Supplement B that the Petitioner submitted was signed by Chief of Police, [REDACTED] Police Department, [REDACTED], Oregon (certifying official), on May 1, 2012. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as murder and in Part 3.3, the certifying official refers to the Oregon Revised Statutes § 163.115 (murder) 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, he indicated that the investigation involves the death of a homicide victim who was killed "as a result of an explosion

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from a bomb type device.” 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 and her four children were “left with no immediate way to support themselves.” The Petitioner also submitted a declaration dated June 5, 2012, in which she stated that her partner died on [REDACTED] and she spoke to the police on December 13 at which time they explained to her how her partner was killed. In her second declaration, dated October 31, 2013, the Petitioner stated that she was not with her partner at the time of the murder but found out about the bomb’s explosion and her partner’s death after she arrived at the hospital. In the second declaration, the Petitioner explained that her neighbors heard the explosion because it was so loud but that she did not hear it because she was in the shower at the time.

While it is clear that the Petitioner has been affected by her partner’s death, she does not meet the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14). In cases where the direct victim was murdered, the regulation only includes as indirect victims the spouses and children of victims at least 21 years old; or the parents and unmarried siblings of victims under 21 years of age. 8 C.F.R. § 214.14(a)(14)(i). In this case, as noted by the Director, the Petitioner was not married to the direct victim, so she would not qualify as an indirect victim of the criminal activity under the regulations. *Id.*

The Director further determined that the Petitioner did not establish that she qualified as a bystander victim because she did not establish that she had suffered direct and proximate harm as a result of the commission of a qualifying criminal activity. On appeal, the Petitioner reasserted that she qualifies as a bystander victim because she was diagnosed with depression and anxiety which was a direct and proximate harm as a result of her partner’s death. She further asserted that she suffered an unusually direct injury as a result of a qualifying crime because she was particularly close to and dependent upon her partner. On motion, the Petitioner states that the Director erred in determining that the Petitioner was not a victim and asserts that she meets the statutory definition of “victim” under both Oregon and federal laws.

Notwithstanding the Petitioner’s assertion that she meets the statutory definition of “victim” under both Oregon and federal laws, 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). The evidence shows that the Petitioner was not present at the time of the murder and only learned of it later at the hospital and from the police. Although the record shows that the Petitioner has been greatly affected by the

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murder of her partner, there is no support for the Petitioner's claim that she was directly or proximately harmed by the criminal activity perpetrated against her partner.

On motion, the Petitioner submits a news article dated [REDACTED] 2013 about the explosion and copies of two of our non-precedent decisions. The article discusses the federal investigation into the bomb that killed the Petitioner's husband but does not add any information to qualify her as a bystander victim. Further, in addition to the Petitioner's case being factually different from the two decisions cited, we do not announce new interpretations of law or establish agency policy through non-precedent decisions. As the Petitioner did not establish that she met the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14), she has also failed to establish that she meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. *See also U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). The Petitioner is consequently ineligible for U nonimmigrant classification and the petition remains dismissed.

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. 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 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is denied.

Cite as *Matter of M-V-P-S-*, ID#13874 (AAO Sept. 15, 2015)