



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

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

MATTER OF M-B-A-

DATE: SEPT. 18, 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 Acting Director (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 finding the Petitioner did not establish that: she has been the victim of qualifying criminal activity; she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity; she has been, is being, or is likely to be helpful to authorities investigating or prosecuting the qualifying criminal activity; and the qualifying criminal activity violated the laws of the United States or occurred in the United States or the territories and possessions of the United States. On appeal, the Petitioner resubmits her prior evidence and a new Form I-918 Supplement B, U Nonimmigrant Status Certification.

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: . . . 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.

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.”

We review these proceedings *de novo*.

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States on July 4, 1998. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an

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accompanying Form I-918 Supplement B, on March 1, 2013. The Director subsequently issued a request for evidence (RFE) for documentation of the Petitioner's marital relationship with the decedent, the requisite substantial physical or mental abuse, and the Petitioner's helpfulness. The Petitioner responded with general information about marriage in North Carolina, a psychological evaluation, and letters from her family members, but she did not provide evidence of her marital relationship or her helpfulness.<sup>1</sup> The Director denied the Form I-918 and affirmed the decision in response to the Petitioner's motion to reopen and reconsider. The Petitioner timely appealed the denial of the Form I-918 petition.

### III. ANALYSIS

#### A. Certified Criminal Activity

The Form I-918 Supplement B that the Petitioner initially submitted was signed by Captain [REDACTED] Violent Crimes Division, [REDACTED] Police Department, [REDACTED] North Carolina (certifying official), on August 30, 2012. The certifying official lists the criminal activity of which the Petitioner was a victim at Part 3.1 as murder. In Part 3.3, the certifying official refers to the North Carolina General Statutes § 14-17 (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, Captain [REDACTED] stated “[s]ee attached copies.” The incident reports indicate that the victim, Y-G-, was dead as a result of a gunshot wound. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated “[n]one.” The Petitioner also submitted her declaration in which she states that she was not present at the time of the murder, but found out about the murder of Y-G-, with whom she had a child and was living with, after she received a telephone call from Y-G-'s cousin.

#### B. Victim of Qualifying Criminal Activity

The Director determined that the Petitioner did not meet the definition of “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14). On appeal, the Petitioner asserts that she qualifies as a victim of Y-G-'s murder because she has suffered direct and proximate emotional and pecuniary harm as a result of his murder. However, the direct victim of the qualifying criminal activity was Y-G-, not the Petitioner. Further, when the direct victim was murdered, the regulation only includes as indirect victims the 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. 8 C.F.R. § 214.14(a)(14)(i). In this case, the Petitioner indicates that she was not married to Y-G-. She, therefore, would not qualify as an indirect victim of qualifying criminal activity at 8 C.F.R. § 214.14(a)(14).

The record also does not establish that the Petitioner suffered direct and proximate harm as a bystander to the murder of Y-G-. 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

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<sup>1</sup> The petitioner also provided a photocopy of a Form I-918 Supplement B that is not certified, and therefore, will not be considered in this proceeding.

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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 its Preamble to the U visa rule, USCIS stated:

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime[.]

72 Fed. Reg. 53014, 53016 (Sept. 17, 2007). The Petitioner submitted a declaration stating that she was not present at the time of Y-G-'s murder, but later found out about the murder from Y-G-'s cousin. She explained that she has suffered emotionally and struggled financially since Y-G- was murdered. Although the Petitioner submitted a psychological evaluation and letters from her family members that indicate that she is depressed and has anxiety as a result of Y-G-'s murder, the record shows that she was not present at the time Y-G- was murdered. Consequently, the Petitioner has not demonstrated that she can be considered a victim under the regulation at 8 C.F.R. § 214.14(a)(14) as a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against Y-G-. Although we are sympathetic to the facts of this case and the hardships the Petitioner and her children have endured since the murder of Y-G-, the evidence does not establish that the Petitioner was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### C. Substantial Physical or Mental Abuse

Because the Petitioner has not established that she was the victim of qualifying criminal activity, she has also not demonstrated that she suffered substantial physical or mental abuse as a result of such victimization, as required by subsection 101(a)(15)(U)(i)(I) of the Act.

#### D. Possession of Information and Helpfulness to Authorities

The Form I-918 Supplement B that the Petitioner initially filed with her Form I-918 reflects that Captain [REDACTED] indicated "No" to the question at Part 4.1 of whether the Petitioner possesses information concerning the qualifying criminal activity. He further indicated "No" at Part 4.2, which asks whether the Petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity. In discussing the Petitioner's helpfulness at Part 4.5, Captain [REDACTED] indicated that "[t]he suspects in applicant's case were found guilty on 3/20/08. The applicant is no longer needed for prosecution." On appeal, the Petitioner submits a new Form I-918 Supplement B, which was certified by [REDACTED] Assistant District Attorney, District Attorney's Office, [REDACTED] North Carolina on January 5, 2015. Although this Form I-918 Supplement B indicated "Yes" at Part 4.1 and 4.2, it was not timely certified within the six months prior to the filing of the Form I-918. See 8 C.F.R. § 214.14(c)(2)(i)(stating that the Form I-918 Supplement B must be "signed by a certifying official within the six months immediately

preceding the filing of Form I-918.”). Accordingly, the petitioner has not established that she possesses information concerning the qualifying crime and was helpful in the investigation of the qualifying criminal activity, as required by subsections 101(a)(15)(U)(i)(II),(III) of the Act.<sup>2</sup>

#### IV. CONCLUSION

Although the qualifying criminal activity violated the laws of the United States, the Petitioner has not demonstrated that: she was a victim of qualifying criminal activity; she suffered substantial physical or mental abuse as a result of having been such a victim; she possesses information concerning the qualifying crime upon which her petition is based; and she has been, is being, or is likely to be helpful to federal, state, or local law enforcement authorities, prosecutor, judge or other federal state, or local authorities investigating or prosecuting the qualifying criminal activity. The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

The petitioner bears the burden of proving eligibility for U nonimmigrant status. 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 appeal is dismissed.

Cite as *Matter of M-B-A-*, ID# 13574 (AAO Sept. 18, 2015)

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<sup>2</sup> Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . . that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).”