



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

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

MATTER OF S-R-M-

DATE: AUG. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the petition and we dismissed a subsequent appeal. We concluded that the Petitioner had not established that she was a “victim of qualifying criminal activity” under the definition of that term at 8 C.F.R. § 214.14(a)(14), and consequently, that she also had not demonstrated that she had suffered resultant substantial physical or mental abuse, possessed information concerning the qualifying criminal activity, had been helpful to authorities investigating or prosecuting qualifying criminal activity, and that such qualifying activity occurred within the jurisdiction of the United States.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record below and on appeal demonstrates that she qualifies as a victim of qualifying criminal activity and satisfies the statutory criteria under sections 101(a)(15)(U)(i)(I)-(IV).

Upon review, we will deny the motion to reconsider.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

Upon a full review of the record, the Petitioner has not overcome the grounds for denial.

In our prior decision on appeal, incorporated by reference here, we dismissed the Petitioner's appeal, finding that the Petitioner had not established that she suffered direct or proximate harm as a result of the commission of qualifying criminal activity, and consequently, she did not qualify as "victim of qualifying criminal activity" under the general definition of that term at 8 C.F.R. § 214.14(a)(14).¹ We further held that although the Petitioner was the parent of the direct victim under 21 years of age, she also did not qualify as an indirect victim of qualifying criminal activity because the record did not establish that her son, the direct victim, was incompetent or incapacitated such that he was unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i). Additionally, we found no legal support for the Petitioner's contention that her son should be deemed a "child" and legally incapacitated for purposes of 8 C.F.R. § 214.14(a)(14)(i) because he was less than 21 years of age at the time of the qualifying crime. To the contrary, noting that the related regulation at 8 C.F.R. § 214.14(b)(2)-(3) presumes incapacity due to a victim's minor age only where the victim is under 16 years of age at the time of the crime (for the purpose of authorizing a parent, guardian, or next friend of a victim to possess the requisite information regarding a qualifying crime on behalf of the victim and provide the required assistance),² we found that the term "incapacitated" is likewise satisfied if a direct victim is under 16 years old for purposes of 8 C.F.R. § 214.14(a)(14)(i). As the Petitioner's son was above 16 years of age and the record did not establish his incapacity or incompetence, the Petitioner did not qualify as a victim of qualifying criminal activity as the parent of the direct victim.

On motion, the Petitioner, relying on the language 8 C.F.R. § 214.14(a)(14)(i), asserts that the direct victim's age is a critical factor in determining his or her competency, and she asserts that a direct victim under 21 years of age should be deemed incompetent or incapacitated. She resubmits a copy of a transcript of an August 26, 2008, USCIS stakeholder call which addressed and indicated, in response to a specific factual scenario, that parents of direct victims under age 21 qualified as indirect victims. However, as we stated previously, the call served an informational purpose in an informal setting and the responses provided therein do not supersede the regulatory definition of "victim of qualifying criminal activity" and are not binding on us. Moreover, contrary to the Petitioner's assertion, our reading of 8 C.F.R. § 214.14(a)(14)(i) does not indicate that a direct victim's age is a critical factor in determining his or her incapacity or incompetency. Rather, 8 C.F.R. § 214.14(a)(14)(i) references the

¹ A "victim of qualifying criminal activity" is an alien who is directly or proximately harmed by the commission of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14). Pursuant to subsection (i) of 8 C.F.R. § 214.14(a)(14), parents 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, or is incompetent or incapacitated such that he or she is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. *Id.*

² In cases where the victim is 16 years of age or older, the regulation authorizes a parent, guardian, or next friend of a victim to possess information and provide the requisite assistance in lieu of the direct victim only if the latter is incapacitated or incompetent. 8 C.F.R. § 214.14(b)(2)-(3). This comports with our interpretation of the similar requirement in 8 C.F.R. § 214.14(a)(14)(i) that we have set forth here and in our prior decision.

direct victim's age at the time of the commission of the qualifying crime as a consideration in an overall determination of an individual's eligibility as a "victim of qualifying criminal activity" under that regulation. Regardless, even if the regulation implicated age as a critical factor in determining incapacity, we held in our prior decision that based on our review of the pertinent statutes and regulations, the term "incapacitated" is satisfied if a direct victim is under 16 years old for purposes of 8 C.F.R. § 214.14(a)(14)(i). As the Petitioner's son was over 16 years of age, the record does not establish his incapacity or incompetency based on consideration of his age alone.

The Petitioner also notes, on motion, our reliance on the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines), which defines the term "incapacitated victim" as "any victim who is unable to interact with [law enforcement] personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance." See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016-17 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). Based on this definition, counsel for the Petitioner draws unsupported conclusions and opines that the Petitioner's son's physical injuries and his emotional state in the aftermath of the crime evidenced his lack of competency and his cognitive and physical impairments. Counsel maintains that the Petitioner's son's cognitive and physical health was so impaired that the latter omitted to initially provide law enforcement with key information, such as the fact that he had been shot, and that it was only with the Petitioner's encouragement that her son was finally able to provide a full account of the qualifying criminal activity. However, counsel's interpretations of the direct victim's mental and physical state and of the reliability of his statements to law enforcement are not evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988) (the assertions of counsel do not constitute evidence). As discussed in our prior decision, the Petitioner's initial statement, her son's statement, and the underlying law enforcement records indicate that he was able to interact with and provide information to law enforcement officials regarding the criminal activity on multiple occasions. Notwithstanding counsel's assertions again that the record did not establish the Petitioner's son's competency and capacity, it is the Petitioner who bears the burden of proof to establish her eligibility, including demonstrating her son's incompetency or incapacity for purposes of 8 C.F.R. § 214.14(a)(14)(i). 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. 127, 128 (BIA 2013). Here, the record does not establish that the Petitioner's son was incapacitated or incompetent such that he was unable to provide information or assistance in the investigation of the criminal activity committed against him.

Apart from the foregoing assertions, the Petitioner does not otherwise identify or assert any legal or factual error in our prior analysis and determination that she had not established that she met the definition of victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), either as a direct victim or as an indirect victim. Instead, the remaining arguments she asserts on motion are identical to those she made previously on appeal, and were fully discussed and dismissed in our previous decision.³

³ The Petitioner also submits a supplemental statement that is identical to one she previously submitted in response to the Director's request for evidence below and provides no new information or evidence for our consideration.

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As she has not identified any, and we find no, error in our remaining determinations, we reaffirm our prior findings.

III. CONCLUSION

On motion, the Petitioner has not overcome the grounds for denial, as she has not demonstrated that she is the victim of qualifying criminal activity, as defined under 8 C.F.R. § 214.14(a)(14) and as required by subsections 101(a)(15)(U)(i). She, therefore, necessarily does not meet the eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring that the Petitioner be the victim of 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). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of S-R-M-*, ID# 17621 (AAO Aug. 19, 2016)