



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

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

MATTER OF L-N-A-Q-

DATE: JAN. 4, 2016

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 Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 (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[.]

Murder is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

The regulation at 8 C.F.R. § 214.14(a)(14) states that the term 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” and further provides that:

(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.

....

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 Guatemala who claims to have last entered the United States on or about October 1, 2002, without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, on October 1, 2013. On September 18, 2014, the Director issued a request for evidence (RFE) to which the Petitioner submitted a timely response. On February 20, 2015, after considering the evidence of record, including the response to the RFE, the Director denied the Form I-918 and the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The Petitioner timely appealed the denial of the

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Form I-918. On appeal, the Petitioner submits a brief, additional evidence, and copies of previously submitted evidence.

III. ANALYSIS

Upon review our *de novo* review, the Petitioner has not overcome the Director's decision to deny the petition.

A. Certified Criminal Activity

In the denial decision, the Director determined that the Petitioner did not meet the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act (substantial physical or mental abuse, possession of information, helpfulness, and jurisdiction over the criminal activity) because she was not the victim of a qualifying crime. The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification, signed on [REDACTED] 2013, by [REDACTED] District Attorney, [REDACTED] District Attorney's Office, [REDACTED] Kansas (certifying official). At Part 3.1, the certifying official indicated that the Petitioner was a victim of murder, a qualifying crime, and at Part 6 that the Petitioner was a family member of the deceased victim. In response to the RFE, the Petitioner submitted a Form I-918 Supplement B signed on October 21, 2014, by the same certifying official, in which the certifying official reiterated at Part 3.1 that the Petitioner is a victim of murder, at Part 3.5, identified the Petitioner as the cousin of the murder victim and, at Part 3.6, identified the Petitioner as the victim's only local family member. At Part 3.6, the certifying official stated that the Petitioner "has provide[d] any and all information our office has requested of her in connection with the prosecution in this matter. She has suffered a great deal of stress and income as a direct result of this murder. She has expressed her concerns and fear, pertaining to her connection to this case." The record also indicates that the Petitioner was subpoenaed to testify in court in the prosecution of the alleged perpetrator of the qualifying crime. In response to the RFE, the Petitioner submitted a personal statement in which she explained that her cousin was murdered on [REDACTED], 2013, that she was very close with her cousin, and that she has suffered "emotional damage" as a result.

B. The Petitioner Does Not Qualify as the Direct or Indirect Victim

While it is clear that the Petitioner has been affected by the murder of her cousin, she does not meet the definition of a "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). On appeal, the Petitioner asserts that she qualifies as a direct victim of her cousin's murder. However, the Petitioner was clearly not the direct victim of the murder and she did not suffer the direct and proximate harm of the murder as she was not the individual who was killed. 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 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*

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Victim and Witness Assistance, 2011 Edition (Rev. May 2012), 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.

As noted above, there may be circumstances under which a bystander to a qualifying crime may suffer unusually direct injuries as a result of witnessing a violent crime, but the Petitioner in this case was not present when her cousin was murdered, there is no indication of when and how she learned of his death, and the record does not establish that she was directly or proximately harmed as a bystander to the qualifying criminal activity. *See* Preamble to the Interim Rule, 72 Fed. Reg. 53016-17. In her personal statement, the Petitioner indicates that she grew up with the victim in Guatemala and that they "relied heavily on each other for support in our daily lives." She also recounts that her husband and two children were close to the victim, that she missed work to plan the funeral and spent \$10,500 to pay for the victim's funeral, that she is being treated for "emotional, psychological and physical illness that [she] experienced since and because of [her] cousin's murder," and that she has developed an acute menstrual disorder caused by stress. In response to the RFE, the Petitioner submitted a letter from [REDACTED] dated November 25, 2014, in which [REDACTED] related that the Petitioner reported a "history of grief and loss and of trauma due to the brutal nature of the death of her cousin" and that the Petitioner reported that she has "flashbacks, worry, nervousness, hypervigilance, nightmares, insomnia, depressed mood, crying spells, fear for her safety, and recurring memories of her cousin's body after the shooting." [REDACTED] concluded that the Petitioner described symptoms "consistent with that of an individual that has witnessed violence and loss and an individual that has sustained trauma." The Petitioner also submitted an affidavit from [REDACTED] a friend of the Petitioner, who reported that, since her cousin's murder, the Petitioner is "very afraid" and "scared to be seen in public" because she fears that people who know the alleged perpetrator of the murder will "come for her and her children". The Petitioner submitted an affidavit from [REDACTED] who indicated that the Petitioner and her cousin were very close, that his death caused her "emotional, psychological and physical illness", and that "[g]oing to court has made her very nervous, and she was not a nervous person before the shooting." On appeal, the Petitioner submits a letter from her father who states that the Petitioner and her cousin were very close and that his nephew's death caused his daughter a lot of pain. We are sensitive to the fact that the Petitioner was affected by the death of her cousin, but she was not the direct victim or a bystander to the murder of her cousin and, as a result, we may not consider the impact of his death on her emotional or physical health.

The Petitioner is also not an indirect victim of a qualifying criminal activity. In cases involving murder, the regulation only contemplates that immediate relatives of the murdered victim will be considered to be indirect victims. 8 C.F.R. § 214.14(a)(14)(i). Specifically, 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. *Id.*

On appeal, the Petitioner contends that USCIS overlooked the word "generally" in 8 C.F.R. § 214.14(a)(14). However, the word "generally" in the regulations refers to the limited exceptions noted above – for bystander victims and the indirect victims listed in the regulation. The Petitioner

also asserts that USCIS should adopt an expansive definition of “victim” to conform to the intent of Congress in enacting legislation for victims of certain criminal activity and that ambiguity must be construed in the non-citizen’s favor. The Petitioner cites section 1513(a)(2)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. Law No. 106-386 (Oct. 28, 2000), which provides:

The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

The VTVPA is unambiguous and clear as to the fact that U nonimmigrant visa classification was meant to protect *victims* of crimes. There is no specific language in section 1513(a)(2)(A) of the VTVPA to suggest that USCIS has interpreted the term “victim of qualifying criminal activity” at 8 C.F.R. § 214.14(a)(14) against Congressional intent. Section 1513(a)(2)(A) of the VTVPA, while stating that the legislation’s purpose is to protect victims of crimes by encouraging them to report their victimization to law enforcement authorities, does not indicate that the term “victim” should be defined broadly to include extended family members who themselves have not been victimized.

Lastly, the Petitioner asserts that USCIS failed to consider 8.C.F.R. § 214(c)(2), which indicates that a Petitioner may submit additional evidence to establish her eligibility. While 8.C.F.R. § 214(c)(2) allows the Petitioner to submit additional evidence, USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. *See* 8 C.F.R. § 214.14(c)(4). Thus, contrary to the Petitioner’s assertion, the mere submission of additional evidence may not always suffice to establish a Petitioner’s burden of proof to show that she is eligible for the relief sought. Ultimately, after a review of the record below and on appeal, the Petitioner has not established that she is either the direct or indirect victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. Substantial Physical or Mental Abuse

As the Petitioner has not established that she was the victim of qualifying criminal activity, she has also not established that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

D. Inadmissibility

Furthermore, the record shows, and the Petitioner admits, that she entered the United States without inspection, admission, or parole, and she is therefore inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have

been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 in order to waive any ground of inadmissibility. As the Petitioner's Form I-192 was denied, she has not established that she is admissible to the United States or that her ground of inadmissibility has been waived. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3).

IV. CONCLUSION

The Petitioner has not demonstrated that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. Accordingly, she has not demonstrated that she meets the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility). Furthermore, the Petitioner is inadmissible to the United States and her ground of inadmissibility has not been waived. The Petitioner is consequently ineligible for U nonimmigrant classification and the Form I-918 must remain denied.

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 appeal is dismissed.

Cite as *Matter of L-N-A-Q-*, ID# 15015 (AAO Jan. 4, 2016)