



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

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

MATTER OF S-T-H-

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[.]

....

(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:

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification provide the following definition of a victim at 8 C.F.R. § 214.14(a):

(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.

The regulatory definition of a victim was drawn in large part from the *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (rev. May 2012) (AG Guidelines). See U Nonimmigrant Status Interim Rule, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (Interim Rule) (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. AG Guidelines at 8-9. The AG Guidelines further explain, "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. However, the Interim Rule clarifies that, while U.S. Citizenship and Immigration Services (USCIS) may find certain petitioners to be eligible for U nonimmigrant status as a result of having been bystanders to a violent crime, only those "who suffer unusually direct injuries as victims" will qualify. Interim Rule, 72 Fed. Reg. at 53016-17.

The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section

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214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Mexico, claims to have last entered the United States in May 2001 without inspection, admission, or parole. She filed the Form I-918, Petition for U Nonimmigrant Status, on January 2, 2014. The Petitioner is the maternal aunt, and now the adoptive mother, of the direct victim, C-C-T-¹, who was [REDACTED] years old on [REDACTED] 2007, at the time of the qualifying criminal activity.

The Director issued a request for evidence (RFE) that, among other things, the Petitioner was the victim of qualifying criminal activity. The Director indicated that the direct victim of the crime was a child whom the Petitioner adopted after the qualifying criminal activity occurred. The Director stated that the Petitioner could not establish that she was an indirect victim of the crime because she adopted the direct victim after the crime occurred, and therefore was not the direct victim's parent at the time the qualifying criminal activity occurred. However, the Director indicated in the RFE that the Petitioner may qualify as a bystander victim, and requested that the Petitioner submit evidence to establish that she was a victim because she suffered direct and proximate harm, as well as substantial physical or mental abuse, as a result of the crime against the direct victim. The Petitioner responded to the RFE with a brief, a revised copy of the Form I-918 Supplement B, and additional evidence relating to her claim that she was a bystander victim of the crime against the direct victim due to her relationship with the direct victim and the emotional impact of the crime on the Petitioner. The Director denied the Form I-918, finding that the Petitioner did not establish that she was an indirect victim of the qualifying criminal activity because the Petitioner adopted the direct victim after the incident occurred. The Director did not address the Petitioner's claim that she qualified as a bystander victim. On appeal, the Petitioner submits a brief.

III. CERTIFIED CRIMINAL ACTIVITY

The Petitioner submitted a Form I-918 Supplement B in response to the RFE signed by [REDACTED] Acting Director, [REDACTED] California (certifying official). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of domestic violence, related crimes, and child abuse. At Part 3.3, the certifying official cited section 273A(b) of the California Penal Code, which relates to willful harm or injury to a child, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. At Part 3.5 of the Form I-918 Supplement B, the certifying official stated that the direct victim, C-C-T-, was a minor. The certifying official indicated that C-C-T- "suffered a serious and deep burn on a large surface area of his neck while in the custody of his paternal aunt," and that his paternal aunt treated the burn with mayonnaise rather than taking him to receive medical care. According to the certifying official, the Petitioner learned of the burn when she picked up C-C-T-

¹ Name withheld to protect identity.

from his paternal aunt's home. The Petitioner then took C-C-T- to the emergency room, where she spoke with Child Protective Services.

IV. VICTIM OF QUALIFYING CRIMINAL ACTIVITY

The preponderance of the evidence does not establish that the Petitioner is a direct or indirect victim of a qualifying crime or criminal activity. On appeal, the Petitioner acknowledges that she had not legally adopted C-C-T- at the time he was burned but states that, as his legal guardian, she was "in all forms acting as his mother" and "shares the attributes of an indirect victim." She further asserts that she was psychologically and emotionally traumatized by the burning of C-C-T- due to their close bond and her responsibility to care for him since the death of her sister, who was C-C-T-'s mother. She contends that she is a bystander victim because she suffered substantial emotional harm as a direct result of the crime against C-C-T-.

The Petitioner does not qualify as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i). Although C-C-T- is a child under 21 years of age, the Petitioner was not C-C-T-'s parent, as that term is defined in the Act, at the time of the criminal activity directed against C-C-T-. Section 101(b)(2) of the Act provides that a "parent" is a person whose relationship with a child "exists by reason of any of the circumstances set forth in [section 101(b)(1) of the Act]" Section 101(b)(1) of the Act provides the definition of a child, which means an unmarried person under age 21 who was born in wedlock, is a stepchild, was born out of wedlock and was legitimated prior to age 18, was adopted, or who was brought to the United States for the purpose of being adopted. The definition of a parent does not include a legal guardian. Additionally, the Interim Rule notes that, although the AG Guidelines allow legal guardians to be considered indirect victims, the Interim Rule "does not extend the victim definition beyond [spouses; children under 21 years of age; and, if the direct victim is or was under 21 years of age, parents and unmarried siblings under 18 years of age], since the U nonimmigrant classification does not apply to other individuals." Interim Rule, 72 Fed. Reg. at 53017; *see also* AG Guidelines at 7. Although the Petitioner recounts that she was acting as a mother figure to C-C-T- at the time of the crime against him, she did not adopt him until after the incident occurred. Therefore, she was not the direct victim's parent at the time of the crime, and she cannot be considered an indirect victim.

Additionally, the Petitioner does not qualify as a direct victim of the qualifying criminal activity as a bystander because the Petitioner was not present when the crime was committed and did not suffer unusually direct injury as a result of the crime against C-C-T-. The Petitioner stated in her personal declaration submitted with the Form I-918, that, after a visit with his paternal aunt, C-C-T- was crying when he returned to the Petitioner's home. She recounted that she discovered that C-C-T- had been badly burned at his paternal aunt's house two days earlier. Although the Petitioner recounts that she was emotionally traumatized by the pain C-C-T- endured due to the burn and the medical treatment, this was in relation to the aftermath of the incident, not the incident itself. Additionally, the Petitioner's statements and supporting evidence indicate that her emotional difficulties were related to previous traumas in her life and that of C-C-T-, including the death of C-C-T-'s parents when he was a young child and his mistreatment at the home of his paternal aunt prior to his injury. However, the Petitioner

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was not present at the time C-C-T- was burned and only learned of the incident two days later and did not suffer unusually direct injury as a result of the crime against C-C-T-, and therefore was not a bystander to the crime. *See* Interim Rule, 72 Fed. Reg. at 53016-17; AG Guidelines at 8-9.

V. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. 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 Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-H-*, ID# 15273 (AAO Jan. 4, 2016)