



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

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

MATTER OF S-R-M-

DATE: JAN. 15, 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 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: . . . murder; felonious

assault. . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(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 of the alien 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 to provide information and assistance reasonably requested. *In the event that the alien has not yet reached 16 years of age*

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*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 alien 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 of the alien may provide the required assistance; and*

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(Emphasis added).

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, a native and citizen of Mexico, claims to have last entered the United States in April 1989, without admission, inspection, or parole. The Petitioner was issued a Notice to Appear on [REDACTED] 2001, which placed her into removal proceedings. An immigration judge granted her voluntary departure with an alternate order of removal to Mexico on [REDACTED] 2002. On appeal, the Board of Immigration Appeals affirmed the immigration judge's decision on February 25, 2004. As the Petitioner did not depart the United States pursuant to the terms of her voluntary departure order, an order of removal against the Petitioner took effect and remains outstanding.

The Petitioner filed the instant Form I-918, Petitioner for U Nonimmigrant Status, along with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on September 11, 2013. The Director subsequently issued a request for evidence (RFE) establishing, among other things, that the Petitioner was an indirect victim of a qualifying criminal activity or had suffered direct and proximate harm as a result of the commission of such activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition, concluding that the Petitioner had not

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established that she was a victim of qualifying criminal activity, and consequently, 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 Petitioner timely appealed. On appeal, the Petitioner submits a brief.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

#### A. Certified Criminal Activity

The Petitioner submitted a Form I-918 Supplement B signed by Lieutenant II [REDACTED] Commanding Officer, [REDACTED] Division, [REDACTED] California, Police Department (certifying official). The certifying official checked the boxes for "Felonious Assault" and "Other: Attempted Murder" in Part 3.1 of the Form I-918 Supplement B, which inquires about the crimes of which the Petitioner was a victim. At Part 3.3, the certifying official cited Cal. Penal Code §§ 664/187, corresponding to the criminal offense of attempted murder, as the relevant criminal statutes 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 Petitioner's son, who was under the age of 21, was a victim of attempted murder when he was shot in the shoulder by an unknown assailant as he was walking home with friends. At Part 3.6 of the Form I-918 Supplement B, which inquires about any known or documented injury to the victim, the certifying official indicated that the Petitioner's underage child sustained a single shot wound to his upper torso and that the Petitioner suffered mental anguish and is depressed and fearful for her son's and her lives as a result of this incident.

#### B. The Petitioner Is Not a Victim of Qualifying Criminal Activity

The Petitioner has not established that she is a "victim of qualifying criminal activity" as that term is defined at 8 C.F.R. § 214.14(a)(14). Pursuant to 8 C.F.R. § 214.14(a)(14), a "victim of qualifying criminal activity" is an alien who is directly or proximately harmed by the commission of qualifying criminal activity. 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. 8 C.F.R. § 214.14(a)(14)(i). The Petitioner asserted below and on appeal that she qualifies as a victim under 8 C.F.R. § 214.14(a)(14)(i) because her son was one of the direct victims of the qualifying criminal activities of felonious assault and attempted murder on [REDACTED] 2006. Although the record establishes that the Petitioner's son, who survived the incident, was less than 21 years of age at the

time, the Petitioner has not demonstrated that her son was otherwise incompetent or incapacitated to satisfy the requirements of 8 C.F.R. § 214.14(a)(14)(i).

On appeal, the Petitioner contends that she qualifies as a victim under 8 C.F.R. § 214.14(a)(14)(i) because the direct victim, her son, was under 21 at the time the criminal offense was committed and therefore, considered to be “incapacitated” due to his status as a child. The Petitioner urges us to apply the definition of “child” at section 101(b)(1) of the Act, which defines that term as an unmarried person under the age of 21, to a determination of her son’s legal capacity under 8 C.F.R. § 214.14(a)(14)(i). The Petitioner’s reliance on section 101(b)(1) of the Act is misplaced, as that provision pertains to a determination of the parent-child relationship based in part on the child’s age. While such a determination is relevant here in demonstrating whether the Petitioner is the parent of the direct victim, 8 C.F.R. § 214.14(a)(14)(i) requires a further determination that the direct victim, regardless of his or her age, is “unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity” due to his or her death, incapacity, or incompetency. The Petitioner has not identified, and we are unaware of, any binding precedent or other legal authority in support of her assertion that a direct victim may be found to be legally incapacitated merely because he or she is less than 21 years of age.<sup>1</sup> The Petitioner’s interpretation, equating incapacity with being under the age of 21, would also impermissibly qualify parents and other specified family members of a direct victim under 21 years of age as indirect victims without further inquiry into whether the direct victim is “deceased,” “incompetent,” and “incapacitated,” thereby rendering those terms meaningless in the regulation.

Additionally, under a plain reading, 8 C.F.R. § 214.14(a)(14)(i) must be read in conjunction with subsections 101(a)(15)(U)(i)(II) and (III) of the Act and the corresponding regulation at 8 C.F.R. § 214.14(b)(2) and(3), which are instructive here. Pursuant to 8 C.F.R. § 214.14(a)(14)(i), an indirect victim steps into the shoes of the direct victim (regardless of age) if the latter is unable to provide information regarding the criminal activity or be helpful to the investigation and prosecution of the activity, as required by subsections 101(a)(15)(U)(i)(II) and (III) of the Act, either due to death, incapacity or incompetency. The regulation at 8 C.F.R. § 214.14(b)(2), (3), implementing the referenced statutory U provision, presumes legal incapacity due to a victim’s minor age only where the victim is under 16 years of age, and in such instances, authorizes a parent, guardian or next friend of a victim to possess the requisite information regarding a qualifying crime and provide the required assistance. By the same token, where the victim is 16 years of age and older and consequently not lacking legal capacity, he or she must be otherwise incapacitated or incompetent before a parent, guardian or next friend is authorized to possess information or provide assistance to law enforcement in lieu of the victim. *See id.* Given the interplay between the two regulatory provisions, legal incapacity deriving from a direct victim’s minor age, as specified in 8 C.F.R. § 214.14(b)(2), (3), is also applicable to 8 C.F.R. § 214.14(a)(14)(i). Accordingly, for purposes of 8 C.F.R. § 214.14(a)(14)(i), we find that

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<sup>1</sup> The Petitioner submitted, below and on appeal, a copy of a transcript of an August 26, 2008, USCIS stakeholder call which addressed whether parents of direct victims under age 21 qualified as indirect victims. However, 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.

the term “incapacitated” is satisfied if a direct victim is under 16 years old. As the Petitioner’s son was already 18 years of age at time of the qualifying crime, the Petitioner may only be considered a victim under 8 C.F.R. § 214.14(a)(14)(i) as the parent of the direct victim who is under 21 years of age, if the record establishes that her son was incompetent or incapacitated.

Neither the Act nor the regulations define the terms “incompetent” or “incapacitated.” However, 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, 53016-17 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule’s definition of victim). The AG Guidelines 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 id.* at 7-8. Our review of the record does not establish the Petitioner’s son’s incapacity or incompetency. The record includes statements from the Petitioner and her son and a psychological evaluation of the Petitioner, all of which primarily addressed the ongoing emotional harm and fear that both suffered as a result of the qualifying crime. They did not, however, show that the Petitioner’s son was incompetent or that he suffered from any cognitive or physical impairment, disappeared, or was subject to physical restraint such that he was incapacitated and unable to communicate with or help law enforcement officials in the investigation or prosecution of the criminal activity. To the contrary, the Petitioner’s son’s statement, as supported by the police report in the record, provided a detailed account of his recollection of the shooting incident and recounted how he provided information about his knowledge of the shooting to police detectives on at least two separate occasions in the hours after the criminal occurrence.

The Petitioner asserts on appeal that the Director erred in finding that the Petitioner’s son’s conduct following the criminal activity established his competency. However, it is the Petitioner who bears the burden of proof in these proceedings to establish eligibility. 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, as discussed, the Petitioner has not satisfied her burden to demonstrate her son’s incapacity or incompetence, and as correctly noted by the Director, the record contains credible evidence to the contrary, which the Petitioner has not overcome on appeal.

Accordingly, our *de novo* review establishes that the Petitioner has not demonstrated that her son was incapacitated or incompetent and therefore unable to possess information about the qualifying crime or provide the required assistance in the investigation or prosecution of the crime. Consequently, she does not qualify as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), based on her familial relationship as the parent of the direct victim under age 21.

The record also does not demonstrate that the Petitioner suffered direct or proximate harm as a result of the commission of the qualifying criminal activity, and, consequently, she does not qualify under the general definition of the term “victim of qualifying criminal activity” under 8 C.F.R. § 214.14(a)(14). On appeal, the Petitioner asserts that the significant harm she suffered as a result of the acts against her son, including being diagnosed with Major Depressive Disorder and Anxiety

Disorder, which exacerbated her pre-existing mental instability arising from prior domestic violence, is sufficient to establish that she suffered direct and proximate harm.

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, supra*, 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 AG guidelines specifically indicate “that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims[,] but provide [] discretion to treat as victims bystanders who suffer unusually direct injuries as victims.” *See U Nonimmigrant Status Interim Rule, supra*, at 53016 (citing the AG Guidelines). Thus, even bystanders to a qualifying criminal activity must demonstrate “unusually direct injuries” to qualify as a victim of qualifying criminal activity.

The record here indicates that the Petitioner was not present at the time her son was shot or in the immediate aftermath. She indicated she did not learn about the shooting until her son called and told her himself. While we recognize the emotional harm the Petitioner described suffering, such harm is a natural result of having a family member being subjected to violence and is an indirect result of the underlying criminal offense that does not fall within the meaning of “direct or proximate harm.” She, therefore, has not demonstrated that she was directly and proximately harmed as a result of the commission of qualifying criminal activity. Accordingly, upon review of the record, the Petitioner has not established that she is a victim of qualifying criminal activity as defined at 8 C.F.R. § 214.14(a)(14).

#### C. Substantial Physical or Mental Abuse

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she necessarily 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. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also not established that she possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

#### E. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also not established that she has been, is being or is likely to be helpful to a federal, state, or local law

enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by section 101(a)(15)(U)(i)(III) of the Act.

#### F. Jurisdiction of Qualifying Criminal Activity

As the Petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

#### IV. CONCLUSION

The Petitioner 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) and (iii) of the Act. She, therefore, also does not meet the remaining 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 at 128). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-R-M*, ID# 15346 (AAO Jan. 15, 2016)