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

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

MATTER OF T-Y-M-R-

DATE: MAR. 23, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 and we dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). 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 motion will be denied for the following reasons.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Honduras, claims to have last entered the United States on November 22, 2004, without admission, inspection, or parole. The record indicates that the Petitioner's younger sister was kidnapped and murdered on or about [REDACTED] 2012. Following a confession to the crime by the victim's husband's brother-in-law, the Petitioner helped in the search for, and later the identification of, her sister's body, and assisted in the prosecution of the perpetrator.¹

The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, along with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on October 7, 2013. The Director subsequently issued a request for evidence (RFE), specifically a copy of the Petitioner's deceased sister's birth certificate to establish a sibling relationship. The Petitioner responded to the RFE with the requested evidence, which the Director found insufficient to establish

¹ As our prior decision sufficiently set forth the factual history in this matter, we need not do so again here.

the Petitioner's eligibility. The Director accordingly denied the Form I-918. We dismissed the Petitioner's subsequent appeal. The Petitioner filed the instant timely motion to reconsider. On motion, the Petitioner submits a brief.

III. ANALYSIS

Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the ground for denial.

A. Certified Criminal Activity

In our August 5, 2015, decision, incorporated here by reference, we held that the Petitioner had not established that she was a victim of a qualifying crime as she had not demonstrated that she suffered direct and proximate harm resulting from the kidnapping and murder of her sister. We left undisturbed the Director's uncontested determination that the Petitioner also did not establish that she was an indirect victim as provided under 8 C.F.R. § 214.14(a)(14)(i). As the Petitioner did not establish that she was a victim of a qualifying crime, we also found that the Petitioner did not satisfy any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

On motion, the Petitioner contends that we erred in finding that she had not contested the Director's determination that she was not a victim of qualifying criminal activity and she asserts that she was both a direct and indirect victim of qualifying criminal activity. The Petitioner misunderstands our prior decision, in which we found only that the Petitioner did not specifically challenge the Director's finding the Petitioner was not an indirect victim under subsection (i) of 8 C.F.R. § 214.14(a)(14). Pursuant to the regulation at 8 C.F.R. § 214.14(a)(14), a "victim of qualifying criminal activity" is defined as an alien who is directly or proximately harmed by the commission of qualifying criminal activity. Alternatively, 8 C.F.R. § 214.14(a)(14)(i) allows certain family members to qualify as indirect victims of qualifying criminal activity. Specifically, parents and unmarried siblings under 18 years of age 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. 8 C.F.R. § 214.14(a)(14)(i). Although the Petitioner asserts that she is both a direct and an indirect victim, she does not explain on motion how she qualifies as an indirect victim under the regulatory requirements. The record here indicates that the direct victim of the criminal activities of kidnapping and murder was the Petitioner's now deceased sister, who was 28 years old at the time. The Petitioner was 36 years old at the time. Although the Petitioner is the sibling of the deceased direct victim, the Petitioner does not qualify as an indirect victim based on this familial relationship because the direct victim was not under 21 years of age and the Petitioner was not under 18 years of age at the time of the qualifying criminal activity, as required by regulation. *Id.* The Petitioner, therefore, does not qualify as an indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), based on her status as the direct victim's sister.

As stated in our previous decision, 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). The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines),² which 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.³ *Attorney General Guidelines for 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 (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 the AG Guidelines . . . 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.

On motion, the Petitioner asserts that we erred in our prior decision because we found that the Petitioner had been “greatly affected” by her sister’s murder while inconsistently holding that she had not established direct and proximate harm resulting from the murder. She also asserts that we disregarded the evidence of the close relationship she had with her sister and the emotional harm she suffered, including the days she spent assisting in the search for sister’s body and having to identify the body, which she maintains constitutes “unusually direct injuries.” The Petitioner contends that not being present at the time of her sister’s murder did not lessen the profound psychological and emotional impact of the crime on her. She further asserts that the determination of whether she suffered direct and proximate harm must take into consideration that the perpetrator was related to the victim’s spouse and lived in the same residence. Given this preexisting relationship between the perpetrator and the victim, the Petitioner maintains that the emotional harm and suffering she suffered as a result of her sister’s murder was a “foreseeable” result of the criminal activity for purposes of the victim definition.

As stated in our original decision, we recognize that the Petitioner undeniably suffered great emotional harm and was deeply affected by her sister’s murder; nevertheless, the harm the Petitioner described suffering is indirect and does not equate to or fall within the meaning of “direct and proximate harm” under 8 C.F.R. § 214.14(a)(14). Contrary to the Petitioner’s assertions, such emotional harm is “foreseeable” only insofar as it is the natural and indirect result of the death of a loved one under violent circumstances typically shared by close relatives and friends without

² *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).

³ The Petitioner’s reliance on the dissenting opinion in *Palsgraf v. The Long Island Railroad Co.*, 248 N.Y. 339 (1928) for a “proximate cause test” is misplaced. The case, a civil negligence action arising out of New York, has no precedential or binding authority on this agency, and the Petitioner has not explained how the proximate cause test discussed in the dissenting opinion is applicable in these federal immigration proceedings.

distinction. The Petitioner has not demonstrated that the victim's preexisting relationship with the perpetrator resulted in harm to the Petitioner that was more direct and proximate than if that relationship had not existed. In addition, as noted, individuals indirectly harmed as a result of a qualifying crime generally do not qualify as a victim and even an individual who is present as a bystander during the commission of the crime against the direct victim must demonstrate unusually direct injuries to also qualify as a "victim." See *U Nonimmigrant Status Interim Rule, supra*, at 53016 (noting that the AG Guidelines provide discretion to treat bystanders as victims where they suffer unusually direct injuries as victims). Here, the Petitioner was neither present during the commission of the offense or in the immediate aftermath nor has she shown that the harm she suffered constituted "unusually direct injuries" beyond the naturally occurring emotional harm of losing a loved one.⁴

The Petitioner also asserts that given the fact that family members who did not suffer harm could qualify as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i), family members such as herself who actually suffered harm, but do not qualify under that provision, should be found to be considered a direct victim who suffered direct and proximate harm. The Petitioner does not cite to any legal or binding authority for this assertion. As discussed herein, as the Petitioner does not qualify as an indirect victim, we look to whether the Petitioner suffered direct and proximate harm as a result of the commission of the qualifying crime against her sister in determining whether the Petitioner qualifies as a victim of qualifying crime. 8 C.F.R. § 214.14(a)(14). Our review of the record does not establish such direct and proximate harm.

The Petitioner further asserts on motion that we erred in not relying on the certifying official's affirmation on the Form I-918 Supplement B that the Petitioner was a victim of qualifying criminal activity, particularly given the certifying agency's intimate knowledge of the crime and interactions with the Petitioner. However, the regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of the evidence, including the Form I-918 Supplement B. Further, in determining whether a certifying agency investigated or prosecuted a criminal activity, as required under by section 101(a)(15)(U) of the Act, we look to the relevant criminal statute as provided on the Form I-918 Supplement B and on any accompanying police reports and criminal records. Here, although the certifying official certified the Petitioner as a victim of qualifying criminal activity, the Form I-918 Supplement B and the record as whole indicated that the direct victim of the qualifying crimes of kidnapping and murder was the Petitioner's sister and that the Petitioner was not present during the commission of the offenses. In describing the crime and the injuries to the victim at Parts 3.5 and 3.6 of the Form I-918 Supplement B, the certifying official also did not indicate that the Petitioner was the victim of the underlying criminal conduct or suffered any harm as a result of the commission of the crime. Consequently, the

⁴ The Petitioner contends that our interpretation of direct and proximate harm would unfairly permit a bystander present by chance during qualifying criminal activity to qualify as a victim where a family member of the direct victim, who was not present, would not qualify, notwithstanding his or her greater emotional injury. However, as noted, even a bystander to the qualifying offense must still demonstrate unusually direct injuries to qualify as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14).

certification of the Petitioner as a victim of the qualifying crimes by the certifying official is insufficient to demonstrate that she is the victim of qualifying criminal activity.

In sum, the Petitioner had 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).

B. Substantial Physical or Mental Abuse

As the Petitioner has not established 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.

C. 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.

D. 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 or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not overcome the grounds for denial, as she has not demonstrated that she was an indirect victim or that she suffered direct and proximate harm such that she qualified as a direct victim of qualifying criminal activity set forth in section 101(a)(15)(U)(iii) of the Act. Consequently, the Petitioner does not meet 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).

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.

Matter of T-Y-M-R-

ORDER: The motion to reconsider is denied.

Cite as *Matter of T-Y-M-R-*, ID# 16099 (AAO Mar. 23, 2016)