



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

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

MATTER OF B-L-A-M-

DATE: MAY 20, 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 Form I-918, Petition for U Nonimmigrant Status. The Director concluded the Petitioner did not establish that she has been a victim of qualifying criminal activity. Accordingly, the Director also determined the Petitioner did not establish that she meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. We dismissed the Petitioner's appeal.¹

The matter is now before us on motions to reopen and to reconsider. On motion, the Petitioner submits a brief and resubmits a personal statement along with an evaluation by a Licensed Clinical Social Worker (LCSW). The Petitioner claims that we incorrectly interpreted the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) and the regulations pertaining to U nonimmigrants.²

Upon review, we will deny the motions to reopen and to reconsider.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons

¹ The Director also concluded that the Petitioner did not establish her admissibility to the United States. The Petitioner did not challenge this finding on appeal or on motions to reopen and to reconsider. As the Petitioner has not sufficiently established her eligibility for nonimmigrant classification as a victim of qualifying criminal activity, we will not further address her inadmissibility in this proceeding.

² In our prior decision, we indicated that although the Petitioner asserted that she would be supplementing her appellate filing, the record did not demonstrate the submission of additional evidence. With her motions, the Petitioner submits copies of correspondence and the brief previously submitted in support of her appeal, therefore establishing that she timely filed supplemental evidence. We withdraw our previous notation indicating otherwise.

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 (AAO 2010). A petitioner may submit any evidence for us to consider; 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

As discussed in our prior decision, incorporated here by reference, under the regulation at 8 C.F.R. § 214.14(a)(14), a “victim of qualifying criminal activity” is defined as any individual who is directly and proximately harmed by the commission of qualifying criminal activity. In this case, the direct victim was the Petitioner’s brother. On motion, the Petitioner reasserts that she is a victim and claims that because the Victims’ Rights and Restitution Act (VRRRA) and the Crime Victims’ Rights Act (CVRA), referred to in the AG Guidelines, as well as the Illinois legislature and courts, categorically define certain family members, including siblings, as *per se* victims of a murdered individual. *See* 42 U.S.C. § 10607; 18 U.S.C. § 3771; *see also* U.S. Dep’t of Justice, Office for Victims of Crime, Attorney General Guidelines for Victim and Witness Assistance (2011 ed., rev. May 2012); 725 Ill. Comp. Stat. 120/3 (2015); *People v. Gutierrez*, 564 N.E.2d 850, 874 (1990). Although the VRRRA and CVRA generally discuss mandatory services and court enforceable rights available to victims of crimes and their family members, they do not provide the definitions and eligibility requirements for U nonimmigrant classification. Further, *assuming arguendo* that the Illinois legislature and courts have recognized and extended services and rights to victims of crimes and their family members, benefits and protections conferred by the State are not relevant to our determination whether the Petitioner has established her eligibility for the federal benefit of U nonimmigrant classification. Rather, under 8 C.F.R. § 214.14(a)(14)(i), as the Petitioner was not under 18 years old when the qualifying criminal activity occurred, she does not qualify as an indirect victim based on her status as the direct victim’s sister.

In the alternative, the Petitioner contends that she is a direct victim because she has suffered emotional harm and would not have otherwise, but for her brother’s death because of their “exceptionally close relationship.” The Petitioner references her mental health diagnosis and symptoms as reported by the LCSW, along with research concerning the loss of a sibling. She states that our prior discussion and description of her harm as an indirect and “natural result” of the death of a family member diminishes not only the seriousness of the harm, but also its “direct and proximate nature” as not all members of a family experience the same harm upon the death of a family member. Although we recognize that the Petitioner has undeniably suffered emotional harm and has been deeply affected by her brother’s murder, the direct victim in this case is the Petitioner’s brother. However, as indicated in the preamble to the interim rule, in certain instances, bystanders who suffer “unusually direct injuries,” also may be treated as direct victims as a result of witnessing a violent crime. *See* New Classification for Victims of Criminal Activity; Eligibility for “U”

Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (to be codified at 8 C.F.R. pts. 103, 212, 214, 248, 274a, and 299).

By the Petitioner's own admission, she was not present at the time of her brother's murder or any aspect of the commission of the qualifying criminal activity. On motion, the Petitioner asserts that the AG Guidelines do not require a victim to have been present when a crime was committed, and that we must determine on a case-by-case basis whether she actually suffered the type of harm discussed in the AG Guidelines. USCIS derived its definition of victim from various resources, including the AG Guidelines; it did not specifically adopt or implement any definition in its entirety. As it relates to the AG Guidelines specifically, the preamble indicated that USCIS anticipated approving very few bystander cases, and noted as an example of the "unusually direct injury" required for a bystander, a pregnant woman who suffered a miscarriage as a result of witnessing a violent crime. *Id.* at 53017. Although the Petitioner learned of her brother's murder shortly thereafter, and indicates she was encouraged by her family not to go to the hospital upon her brother's death because she was pregnant, the resultant emotional harm that the Petitioner has described does not demonstrate an "unusually direct injury," such as the example provided in the AG Guidelines.

Accordingly, the Petitioner's submission on motion does not overcome our previous conclusion that the Petitioner has not demonstrated that she is a victim of qualifying criminal activity. In addition, a review of the record indicates that our prior decision was supported by the evidence in the record at the time, and we did not ignore or mischaracterize the Petitioner's evidence, or apply an erroneous standard of review.

III. CONCLUSION

The Petitioner has not established that she is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act, and she thereby cannot demonstrate that she meets any of the remaining eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

The Petitioner bears the burden of proof to establish her eligibility. 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. Accordingly, the motions to reopen and to reconsider will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of B-L-A-M-*, ID# 16569 (AAO May 20, 2016)