



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

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

MATTER OF F-F-D-J-

DATE: OCT. 27, 2016

APPEAL OF VERMONT SERVICE CENTER 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 (U petition), concluding that the Petitioner did not establish that he was helpful to law enforcement. In addition, the Director found that the Petitioner was ineligible for U nonimmigrant status because he was culpable for the criminal activity that was investigated or prosecuted. Finally, the Director noted that the Petitioner is inadmissible and his Form I-192, Application for Advance Permission to Enter as Nonimmigrant, was denied.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. He asserts that the Director erred in concluding that he was not helpful to law enforcement and that he was culpable for the criminal activity that was investigated or prosecuted.

Upon *de novo* review, we will dismiss the appeal.

I. 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[.]

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

(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.

....

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

Additionally, the regulation at 8 C.F.R. § 214.14(b) provides the following pertinent information regarding the eligibility requirements for U nonimmigrant classification:

(b) *Eligibility*. An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

....

(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[.]

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, 376 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; 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

The Petitioner filed the instant U petition. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's grounds for denial.

A. Victim of Qualifying Criminal Activity

1. Criminal Activity Certified as Being Detected,¹ Investigated, or Prosecuted

The Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), dated November 28, 2012, signed by [REDACTED] Victim Witness Program Supervisor, [REDACTED] County District Attorney's Office, [REDACTED] California (certifying official). At part 3.3 of the Supplement B, the certifying official cited Cal. Penal Code section 245(a)(1), assault with personal use of a deadly weapon, as the statutory citation for the criminal activity that was investigated or prosecuted. At part 3.1, the certifying official asserted that the offense committed against the Petitioner involved or was similar to the qualifying crime of felonious assault. At part 3.5 of the Supplement B, the certifying official indicated that the Petitioner was stabbed in the chest with a knife. At part 4.2, the certifying official indicated that the Petitioner has been, is being, or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity. In an explanation of the Petitioner's helpfulness at part 4.5, the certifying official stated that police officers who interviewed the Petitioner noted that he was "somewhat uncooperative in answering their questions." The certifying official also indicated that the perpetrator of the crime against the Petitioner was the Petitioner's cousin and a member of a rival gang.

2. Culpability for Qualifying Criminal Activity

The Director erred in finding that the Petitioner is not a victim because he is culpable for the qualifying criminal activity that was investigated or prosecuted. The regulation at 8 C.F.R. § 214.14(a)(14)(iii) provides that "[a] person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity." The police reports relating to the qualifying criminal activity indicate that the Petitioner was the victim of a stabbing on [REDACTED] 2011, and that the suspect was charged with assault with a deadly weapon in violation of Cal. Penal Code § 245(a)(1). The Director stated that one witness who was interviewed about the incident stated that the Petitioner approached the perpetrator, who then stabbed the Petitioner. The Director also noted that, according to some evidence in the police reports, the Petitioner and the perpetrator were members of rival gangs. Therefore, the Director concluded that, by approaching a rival gang member, the Petitioner was culpable for the stabbing.

¹ The term "investigation or prosecution," as used in section 101(a)(15)(U)(i) of the Act, also includes the "detection" of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

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The Petitioner was not arrested for committing any crime(s) during the [REDACTED] 2011, incident that was certified in the Supplement B, and there is no evidence that the police investigated actions by the Petitioner against the perpetrator. Therefore, the Petitioner is not culpable for the qualifying criminal activity that was investigated by the certifying agency, and we withdraw the portion of the Director's decision finding to the contrary. Accordingly, the Petitioner has established that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act.

B. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The Petitioner has not established that he has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he was a victim. In his brief on appeal, the Petitioner contends that he was initially hesitant to provide information to the police during interviews immediately following the qualifying criminal activity. He explains that he was interviewed while in the hospital after being stabbed, and that his shock from the incident, his young age of [REDACTED] years, and his fear of retaliation by the perpetrator contributed to his hesitation to speak with the police. However, the Petitioner asserts that he later provided full information to the police. He claims that, after he was able to process the events, better understood his rights, and spoke with a Spanish-speaking police officer, he cooperated fully.

Pursuant to the regulations, the Petitioner must show that "since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). This regulatory provision "exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner "only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

In a personal statement submitted with his U petition, the Petitioner stated that he was unable to answer the police officer's questions in the hospital because he was "frightened of the consequences" and was "unclear from the affect [*sic*] of the attack and the medical treatment" The Petitioner noted, "After an hour [the police officers] returned and I was more clear-headed and was able to respond to all the questions they made. I gave the officer all the information requested and wanted to have this person prosecuted to the fullest extent."

The police reports about the crime against the Petitioner indicate that, per statements from witnesses, he was stabbed by his cousin, and that he saw his cousin just prior to the stabbing. The reports of the investigation state that the Petitioner was first interviewed while in the emergency room at the hospital. [REDACTED] reported that he examined the Petitioner there while the Petitioner was interviewed by two other officers, one of whom was providing Spanish interpretation for the Petitioner. [REDACTED] stated that the Petitioner claimed that he did not know who stabbed

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him, and “was being uncooperative.” [REDACTED] also indicated that, when questioned further about what he heard or saw during the incident, the Petitioner “would not provide any further information and became uncooperative.”

In a supplemental police report, [REDACTED] stated that he interviewed the Petitioner after the Petitioner spoke with [REDACTED]. According to [REDACTED] the Petitioner stated that he “thought he would recognize the individual who had stabbed him, and noted that he had seen the suspect . . . before.” [REDACTED] reported that the Petitioner “seemed somewhat cooperative at this point, however, I sensed some reluctance on his part.” [REDACTED] also reported that, after learning that the suspect was the Petitioner’s cousin, he re-interviewed the Petitioner with this information. According to [REDACTED] the Petitioner “appeared to be attempting to protect [his cousin] to some degree as he appeared reluctant to tell us about [his cousin].”

In a third police report, [REDACTED] indicated that he spoke with the Petitioner while the Petitioner was being interviewed by [REDACTED] stated:

I advised [the Petitioner] that it was important for him to cooperate with the investigation for the purposes of future identification of suspects and/or assistance from the office of the Victim/Witness unit at the District Attorney’s office. [The Petitioner] said that it did not matter and he did not know who stabbed him at all.

A fourth supplemental report, which is unsigned, states that the Petitioner positively identified his cousin in two photographs that the police showed him, and that he told them his cousin’s name.

The police reports as a whole do not indicate that the Petitioner was cooperative in the police investigation. Although the Petitioner claims in his appeal brief that he was able to provide better information once he spoke with a Spanish-speaking officer, the reports indicate that the Spanish-speaking officer interpreted for the Petitioner beginning with the initial interview. We acknowledge the Petitioner’s assertion that he was initially unable to answer questions due to the shock of his injury and his fear about the incident. However, the record does not support his claim that he became more cooperative in later interviews. Instead, most of the police officers indicated that the Petitioner was uncooperative in all interviews, being continuously reluctant to provide information, and the Petitioner advised [REDACTED] that he felt that his cooperation “did not matter.” Although one officer stated in an unsigned report that the Petitioner identified his cousin in a photograph and provided his name, this does not indicate that the Petitioner provided full information about his knowledge of his cousin’s involvement in the stabbing and cooperated with the investigation overall.

The evidence as a whole indicates that the Petitioner repeatedly denied knowledge of the details of the incident and the identity of the perpetrator, despite knowing that the perpetrator was his cousin. The Petitioner has not shown that “since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). Accordingly,

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the Petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

III. CONCLUSION

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 F-F-D-J-*, ID# 10114 (AAO Oct. 27, 2016)