



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re. 1563491

DATE: JAN. 3, 2020

Appeal of Nebraska Service Center Decision

Form I-918, Petition For U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under sections 101(a)(15)(U) and 214(p), of the Immigration and Nationality Act (the Act) 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief, a brief of *amicus curiae*,¹ and additional evidence. Upon *de novo* review, the matter will be remanded to the Director for the issuance of a new decision.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish that he or she: has suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possesses information concerning the qualifying criminal activity; and has been helpful, is being helpful, or is likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act.

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, a petitioner must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying a petitioner’s helpfulness in the investigation or prosecution of the qualifying criminal activity. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). The petitioner must also provide a statement describing the facts of his or her victimization as well as any additional evidence he or she wants USCIS to consider to establish that he or she is a victim of qualifying criminal activity and has otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii). Although a petitioner may submit any relevant, credible evidence for us to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

¹ [redacted] LLP submitted the brief as counsel for *amicus curiae* [redacted] and the [redacted]. We thank *amicus curiae* for their contribution.

III. ANALYSIS

The record shows that the Petitioner's daughter, J-M-,² suffered physical and emotional abuse at the hands of her former partner, R-D-, for approximately twenty years. In [redacted] 2013, the Petitioner's daughter was murdered by R-D-, who then took his own life. The Petitioner filed the instant U petition in October 2014.

A. Victim of Qualifying Criminal Activity

To establish eligibility for U nonimmigrant classification, the Petitioner must show that she was a victim of qualifying criminal activity. Sections 101(a)(15)(U)(i)(I) (requiring substantial physical or mental abuse as a result of having been “a victim of [qualifying] criminal activity”) and 101(a)(15)(U)(iii) of the Act (laying out the 28 statutorily enumerated qualifying crimes); 8 C.F.R. § 214.14(a)(14) (defining “victim of qualifying criminal activity”). The crime at issue in this case, murder, is qualifying criminal activity listed in section 101(a)(15)(U)(iii) of the Act.

A “victim of qualifying criminal activity” is defined as one “who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.” 8 C.F.R. § 214.14(a)(14). The “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,” are also 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.” 8 C.F.R. § 214.14(a)(14)(i).

In this case, the Director determined that the Petitioner was not a victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14)(i), because her daughter was over 21 years of age at the time of her murder. The Petitioner does not contest this determination on appeal. Instead, the Petitioner asserts that she is a victim of qualifying criminal activity because she herself suffered direct and proximate harm, and unusually direct injury, as a bystander to her daughter's murder. She cites to the preamble to the U Nonimmigrant Status Interim Rule as support for this assertion, wherein USCIS explained that the agency may, in limited circumstances, “exercise its discretion on a case-by-case basis to treat bystanders as victims where the bystander suffers an unusually direct injury as a result of a qualifying crime.” Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007).

1. The Meaning of “Direct and Proximate Harm” in the Regulatory Definition of Victim

The U-related provisions of the Act include, but do not define, the term “victim.” While the relevant regulations define a “victim of qualifying criminal activity” as “generally mean[ing] an [individual] who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity,” 8 C.F.R. § 214.14(a)(14), neither the Act nor the regulations define the term “direct and proximate harm.” On appeal, both the Petitioner and *amicus curiae* argue that the language of this term is unambiguous and should be interpreted consistent with “well-settled law governing the

² Initials are used throughout this decision to protect the identities of the individuals.

interpretation of the term . . . in other federal statutes.” They cite to the Mandatory Victim Restitution Act of 1996 (MVRA), the Crime Victim’s Rights Act of 2004 (CVRA), the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines), and related case law in support of this proposition. Both the MVRA and CVRA define “crime victim” as a “person directly and proximately harmed as a result of the commission of” a crime, 18 U.S.C. §§ 3663(a)(2) and 3771(e), and the AG Guidelines and related case law ground the “direct and proximate” language in the principles of “but-for” and “proximate” causation, whereby an individual is considered a “victim” of an offense if “the alleged harm [was] a . . . ‘but-for’ consequence” and “reasonably foreseeable result of the charged offense.”³ AG Guidelines at 8-9 (rev. May 2012).⁴ The Petitioner and *amicus curiae* urge that, under this broad formulation, the Petitioner “would clearly be within the scope of a ‘victim’”

In the context of the administration of, and purpose behind, U nonimmigrant status regulations, however, the term “direct and proximate” at 8 C.F.R. § 214.14(a)(14) is genuinely ambiguous and subject to reasonable agency interpretation. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2415-16 (2019) (stating that if, after consideration of “the text, structure, history, and purpose of a regulation . . . genuine ambiguity remains, . . . the agency’s reading must . . . be ‘reasonable’” to warrant deference). A detailed explanation follows.

The U nonimmigrant regulations recognize the devastating impact that certain crimes can have on close family members and the vital role that those family members can play in the investigation and prosecution of the relevant offense. *See* 8 C.F.R. § 214.14(a)(14)(i) (extending eligibility to specified family members when the direct victim of the qualifying crime is “deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity”); 72 Fed. Reg. at 53017 (“Family members of murder, manslaughter, incompetent, or incapacitated victims frequently have valuable information regarding the criminal activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent.”). USCIS referenced the MVRA, CVRA, and AG Guidelines as “informative resource[s] in the development of th[e] definition of victim” at 8 C.F.R. § 214.14(a)(14). *See* 72 Fed. Reg. at 52016.

However, USCIS likewise recognized the statutory limits inherent in, and necessary to the application of, the definition of the term “victim” in the U-related provisions of the Act. While the MVRA, CVRA, and AG Guidelines speak to the mandatory rights of, and provision of restitution to, victims of crimes and their family members, these sources do not address, nor define, these individuals’ eligibility for immigrant or nonimmigrant status under the Act. *See* 18 U.S.C. §§ 3663(a)(1) (allowing a federal criminal court to order restitution to any victim of a specified series of offenses) and 3771(a) (laying out the mandatory rights of crime victims, including the right to be protected from the accused,

³ In a supplemental briefing submitted on appeal, the Petitioner additionally cites to *Morris v. Nielsen*, 374 F.Supp.3d 239 (E.D.N.Y. 2019), as support for a broad reading of the “direct and proximate harm” language in 8 C.F.R. § 214.14(a)(14). However, the District Court’s decision in *Morris* is binding on only the parties before it and, accordingly, does not bind USCIS in future adjudications. Moreover, in contrast to the broad precedential authority of the case law of U.S. circuit courts of appeals, we are not bound to follow the published decision of a U.S. district court. *See Matter of K-S-*, 20 I&N Dec. 715, 715, 719 (BIA 1993) (holding that the Board of Immigration Appeals is not bound by the decision of a U.S. district court within the same district).

⁴ The AG Guidelines were originally published in May 2005; however, they were updated to “reflect[] current statutory provisions, recogniz[e] the technological and legal changes that have taken place since the previous Guidelines were promoted, and incorporate[] best practices” in October 2011.

receive notice of any proceeding, and receive full and timely restitution); AG Guidelines at 1 (“Federal victims’ services and rights laws are the foundation for the AG Guidelines”). Accordingly, USCIS addressed the MVRA, CVRA, and AG Guidelines in the preamble to the U interim rule as only an “informative resource.” 72 Fed. Reg. at 52016. The MVRA, CVRA, and AG Guidelines are not cited in the Act or the regulatory definition of “victim of qualifying criminal activity” or anywhere else in the U nonimmigrant implementing rule at 8 C.F.R. § 214.14.

This distinction is critical to the structure, purpose, and goals of the U nonimmigrant status program. The program was created in order to “strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking . . . and other crimes while offering protection to . . . crime victims in keeping with the humanitarian interests of the United States,” creating a unique immigration benefit that provides a path to lawful permanent residency and naturalization. Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. 106-386, 114 Stat. 1464, sec. 1513(a)(2); sections 245(m) and 316 of the Act, 8 U.S.C. §§ 1255(m) and 1427 (providing for, and laying out the eligibility requirements of, U-based adjustment of status to that of a lawful permanent resident and subsequent nationality through naturalization). Congress recognized the narrow scope of individuals that would be eligible for the benefit by placing a cap on the number of U-1 nonimmigrant visas available per fiscal year. Section 214(p)(2) of the Act limits U-1 nonimmigrant status to just 10,000 individuals per fiscal year. This statutory cap reflects congressional intent to create an immigration benefit limited to only certain individuals who were victims of qualifying criminal activity, as opposed to any individual impacted by a crime.⁵ Aligned with this congressional intent, 8 C.F.R. § 214.14(a)(14) expressly limits who may be considered a victim eligible for U nonimmigrant status.

Given the purpose behind, and limited scope of, the statute and regulation, USCIS did not intend for “direct and proximate harm” to encompass all “but-for” and “reasonably foreseeable” harm that may be applicable in victim restitution or other, distinct contexts. Instead, USCIS implemented the statutory scheme as set forth by Congress by concluding that “direct and proximate harm” generally encompassed only those individuals who had a qualifying crime committed against them. 8 C.F.R. § 214.14(a)(14); 72 Fed. Reg. at 53016 (stating that “USCIS does not anticipate approving a significant number of [petitions] from bystanders”). *See also* Black’s Law Dictionary (11th ed. 2019) (defining “direct” as “free from extraneous influence” and “proximate” as “very near or close in time or space”). Relatedly, in looking to the preamble’s use of the term “bystander,” USCIS explained that any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed is limited, and would generally only be contemplated for those who were present during the commission of a particularly violent crime and consequently suffered an unusually direct injury. *See* 72 Fed. Reg. at 53016 (stating that “USCIS does not anticipate approving a significant number of [petitions] from bystanders, but will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers unusually direct injury as a result of a qualifying crime”). *See also* Black’s Law Dictionary (defining “bystander” as “someone who is present when an event takes place”).

⁵ We additionally note that, to date, the U nonimmigrant status program is vastly oversubscribed, with pending U-1 petitions reaching 144,452—a number over 14 times the annual statutory cap—and a total pending case load of 243,695 petitions. Department of Homeland Security, USCIS, Form I-918, Petition for U Nonimmigrant Status (September 2019), *available at* <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

2. The Petitioner Suffered Direct and Proximate Harm as a Result of Her Daughter's Murder

In the present case, the Petitioner has established that a favorable exercise of discretion is warranted to find that she suffered direct and proximate harm as a result of her daughter's murder and may be considered a victim for U nonimmigrant purposes.

As a preliminary matter, the preponderance of the evidence indicates that, during the timeframe of her daughter's murder, the Petitioner was contemporaneously aware that her daughter was in imminent danger of severe physical harm and was present at the location of her murder. In her personal statements in the record before the Director, the Petitioner explained that she was aware of and dealt with the aftermath of R-D-'s physical and emotional abuse of her daughter for many years and was consequently attune to the danger she faced on the night of her murder. She stated that she repeatedly attempted to distance her daughter from R-D-, including taking her to a domestic violence shelter and assisting her in filing a restraining order against R-D- after he "beat [her] and . . . broke [the telephone] so she couldn't call the police" in April 2009. However, the Petitioner explained that her daughter would always "[go] back to [R-D-] out of fear and pressure" and that, on several occasions, R-D- threatened to harm the Petitioner or other members of her daughter's family in an effort to continue to exercise control over her daughter.

The Petitioner recounted that, on the evening of her daughter's death, her daughter made contact with her granddaughter, informing her via text message that R-D- was taking her to the ranch where he used to work, and she was afraid. The Petitioner explained that, as a result of the text message, she and her granddaughter immediately drove out to the ranch to look for her daughter, but that they were not able to drive past the entrance because the gate was closed and the proprietor of the land would not allow them on the property. The Petitioner additionally explained that she reported to law enforcement that her daughter was "missing and in trouble, . . . with [R-D-] who was a dangerous man . . . who had abused her in the past." Incident reports in the record before the Director corroborate that the Petitioner was at the ranch, and reported her daughter as missing, during the timeframe of her daughter's murder. In a letter submitted on appeal, the [redacted] Program Manager of the [redacted] Oregon District Attorney's Office confirms that the Petitioner's daughter was killed [redacted] by her longtime partner and coparent when she attempted to end their relationship. The Program Manager explained that the Petitioner provided "critical insight into the relationship," was "essential in providing law enforcement information about the abuse [her daughter] endured" and her "cooperation was critical in determining . . . the motives behind her daughter's murder."

Moreover, the Petitioner has established that her daughter's murder was particularly violent. In her personal statements in the record before the Director, the Petitioner explained that her daughter's body was left on the grounds of the ranch and showed that R-D- "viciously attacked her [redacted] and left her for dead." The incident reports in the record before the Director corroborate that the Petitioner's daughter was [redacted]

[redacted] The incident reports further indicate that, after being attacked, the Petitioner's daughter drove a vehicle approximately half a mile and, unable to control it, exited and attempted to walk or crawl to safety before she died from her wounds. An autopsy report, likewise in the record before the Director, confirmed the cause of death to be [redacted] and the manner of death to be "homicide."

The Petitioner has also established that she suffered unusually direct injury as a result of her daughter's violent murder. Acknowledging her temporal and physical proximity to the murder, the Petitioner's personal statements, a psychological evaluation, and numerous mental health assessments in the record before the Director document the Petitioner's persistent self-blaming, feelings of regret, and asking of "what if?"—even years after the incident—based on her having been so near to, but unable to prevent, her daughter's death.

Moreover, the record includes evidence supporting the Petitioner's claim on appeal that she was also a target of the crime, as the manner of her daughter's death indicates the perpetrator also intended to harm the Petitioner. In her personal statements in the record before the Director, the Petitioner described R-D- threatening or otherwise seeking to harm her on numerous occasions based on her efforts to distance R-D- from her daughter. Furthermore, a letter from the pastor of the Petitioner's church in the record before the Director conveyed knowledge of the Petitioner's tenuous relationship with R-D- and opined that, on the evening of her death, R-D- allowed the Petitioner's daughter to reach out to her family "so that [the Petitioner] would go to find her" and that he killed her daughter in a way calculated to do the most damage to her daughter's family; "I believe that the way [R-D-] killed [the Petitioner's daughter] [REDACTED], was with the intention that when [the Petitioner] thought about her daughter, she would suffer, remembering the horrible way in which she was murdered."

The Petitioner also submitted evidence of the severe emotional and psychological injury she suffered as a consequence of her daughter's death, which indicates that she remains regularly reminded of, and haunted by, the fact and specific manner of the murder. In her personal statements in the record before the Director, the Petitioner emphasized that her life was forever altered by her daughter's death; "[t]hey have taken half my heart from me." The Petitioner further stated that she is now legal guardian to, and responsible for the welfare of, her daughter's two children, and that—although they are her "reason for living"—she is constantly reminded of her daughter through her care of them. The Supplement B submitted with the Petitioner's U petition confirmed that she "is the surviving mother of a homicide" and stated that she "experienced extreme emotional and psychological trauma" as a result of it. The psychiatric evaluation and mental health assessments in the record before the Director diagnosed the Petitioner with both major depressive disorder (MDD) and post-traumatic stress disorder (PTSD) as a result of her daughter's murder, and explained that her symptoms were "presenting in multiple domains to an unusually severe degree." A January 2018 letter from the Petitioner's therapist submitted on appeal states that the Petitioner disclosed "substantial physical and mental trauma" throughout her therapy sessions, including the "inability to stop/manage multiple overwhelming . . . reminders of her daughter through her grandchildren"

Viewed in the totality, the evidence of the Petitioner's contemporaneous awareness of the grave harm her daughter faced given the history of R-D-'s abuse, the Petitioner's temporal and physical proximity to her daughter's brutal murder, and the unusually direct injury she suffered as a result, indicate that her experience of her daughter's murder was akin to that of a victim of the offense. The Petitioner has established, by a preponderance of the evidence, that she warrants a positive exercise of our discretion to determine that she suffered direct and proximate harm as a result of having been the victim of a qualifying crime, as 8 C.F.R. § 214.14(a)(14) requires.

III. CONCLUSION

The Petitioner has established, by a preponderance of the evidence, that she warrants a positive exercise of our discretion to find that she suffered direct and proximate harm as a result of her daughter's murder and may be considered a victim of qualifying criminal activity for U nonimmigrant purposes. The Director did not otherwise evaluate whether the Petitioner satisfied the remaining U nonimmigrant eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act. Because the only ground for denial of the Petitioner's U petition has been overcome on appeal, the matter will be remanded for the issuance of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and for the entry of a new decision, which, if adverse to the Petitioner, shall be certified to us for review.