U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31020186

Date: APR. 24, 2024

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 U petition, concluding that the Petitioner did not establish that he was a victim of qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity of which they are the victims. Section 101(a)(15)(U)(i) of the Act.

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want U.S. Citizenship and Immigration Services (USCIS) to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

[1] The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

Petitioners bear the burden of proof of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(2); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). USCIS has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency 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).

II. ANALYSIS

The Petitioner, a citizen of El Salvador, filed his U petition in January 2018 with a Supplement B signed and certified by the Victim Advocate of the Florida State Attorney's Office, [redacted] certifying the crime investigated or prosecuted was murder under sections 782.04(1)(a) and (b) of the Florida Statutes. When asked to provide a description of the criminal activity being investigated or prosecuted, as well as any known or documented injury to the Petitioner, the certifying official referred to the police report. The accompanying police report included information about the Petitioner's mother and sister and blacked out information under the witness section. The Petitioner also submitted a copy of his Georgia driver's license issued in May 2017 and other biographical documents. According to the Petitioner's affidavit submitted with his response to the Director's request for evidence (RFE), his mother and sister were murdered in his mother's house in [redacted] 2017. The Petitioner indicated that he contacted his former sister-in-law because his mother did not respond to his phone calls, and she went to the Petitioner's mother's house and discovered many police officers. When the Petitioner arrived at the house, he saw the bodies of his mother and sister and he learned that the neighbors alerted the police after seeing his sister's two-year-old daughter, who was present during the shootings, covered in blood. The Petitioner provided a mental health evaluation with the RFE response, which indicated that he has suffered severe anxiety and depression since the incident due to the tragic loss of his mother and sister.

The Director denied the petition, concluding that the Petitioner was not a direct or indirect victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14) or that he suffered direct and proximate harm as a result of qualifying criminal activity. The Director found that the Petitioner, who was 36 years old at the time of the incident and was not at his mother's house at the time of the murder, did not meet the definitions of a direct or indirect victim or an unusually direct bystander victim. On appeal, the Petitioner asserts that he meets the definition of a victim because he lived with his mother in Florida at the time of her murder, he suffered substantial and immeasurable harm as a result of his mother's murder, and he was helpful in the investigation of the qualifying criminal activity because he provided the police with information about his unanswered calls to his mother which helped determine the murder's timeframe and his sister's relationship with the killer. He contends that while living with her in Florida, he accepted part-time employment in Georgia but returned to his mother's home during his days off work, and when he received full-time employment, he returned to his mother's home in Florida once or twice a month. To support his assertion that he always considered his mother's house as his domicile and residence, he submits additional evidence, such as an updated personal affidavit, a 2010 insurance bill, 2009 tax documentation, a Florida driver's license issued in 2007, a 2016 statement of financial assistance, and an affidavit from a neighbor and family friend.

Upon review, the record supports the Director's determination that the Petitioner was not a direct or indirect victim or that he suffered direct and proximate harm as a result of qualifying criminal activity. 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." The Mandatory Victim Restitution Act of 1996 (MVRA) and the Crime Victim's Rights Act of 2004 (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).

The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) 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." AG Guidelines at 8–9 (rev. May 2012). In the context of the administration of, and purpose behind, the U nonimmigrant status regulations, 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).

The U nonimmigrant status 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"); Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53,017 (Sept. 17, 2007) ("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.").

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 or 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, 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 53,016. 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 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 who 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. 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 against whom qualifying criminal activity is directly committed. 8 C.F.R. § 214.14(a)(14); New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,016 ("The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims."). USCIS explained that the statutory list of qualifying criminal activities includes "murder or manslaughter, the direct targets of which are deceased" and "witness tampering, obstruction of justice, and perjury, which are not crimes against a person." New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,017. Consequently, USCIS explained "this rule extends the definition of victim beyond the direct victim of qualifying criminal activity" only in "certain circumstances. *See* new 8 C.F.R. 214.14(a)(14)(i) & (ii)." *Id.*

Relatedly, in looking to the use of the term "bystander" in the preamble to the U interim rule, USCIS explained that any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed would be applied in limited, dire circumstances, and would generally only be contemplated for those who were present during the commission of particularly violent qualifying criminal activity and concurrently suffered an unusually direct injury as a result of the crime. *See* New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,016 ("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. An example of an unusually direct injury suffered by bystander would be a pregnant bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.").

Here, the Petitioner has not established, by a preponderance of the evidence, that he suffered direct and proximate harm as a result of the commission of qualifying criminal activity that was not perpetrated against him. We acknowledge the impact the criminal activity has had in the Petitioner's life. However, the Petitioner was not present and did not experience firsthand, the actual moments of qualifying criminal activity and instead was informed of the events soon afterwards. The qualifying criminal activity was not committed directly against the Petitioner, he was not present during the crime, and he did not personally witness the criminal activity as it occurred. Therefore, the Petitioner has not established by a preponderance of the evidence that he was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I) of the Act; 8 C.F.R. §§ 214.14(a)(14), (b)(1), (c)(2)(ii)–(iii). Accordingly, he is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.