

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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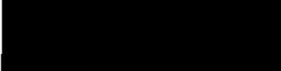


U.S. Citizenship
and Immigration
Services



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Date: **OCT 24 2012**

Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition for failure to establish that the petitioner was the direct or indirect victim of a qualifying crime or criminal activity from which she suffered any resultant substantial physical or mental abuse. On appeal, counsel submits a brief.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification:

(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;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification provide for certain definitions, and state, in pertinent part:

(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.

(i) The alien 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, will be 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. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

* * *

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in August 1999, without being inspected, admitted or paroled. On January 24, 2011, the petitioner filed the instant Form I-918 U petition. On September 28, 2011, the director issued a Request for Evidence (RFE) to which the petitioner, through counsel, submitted a timely response. On March 8, 2012, after considering the evidence of record, including counsel's response to the RFE, the director denied the petition and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). The petitioner timely appealed the denial of the Form I-918 U petition.

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a direct or indirect victim of a qualifying crime or criminal activity.

When filing the U nonimmigrant petition, the petitioner submitted a certified Form I-918 Supplement B, signed by [REDACTED] Los Angeles County, California Sheriff's Department (certifying official). At Part 3.1, [REDACTED] identified the crime as murder and listed the statutory citation for

the crime at Part 3.3 as California Penal Code §187(a) (murder). At Part 3.5, the certifying official described the criminal activity being investigated or prosecuted as: "victim's partner . . . was walking toward his car, he was shot with a gun." At Part 3.6, the certifying official did not describe any known or documented injury to the petitioner, and instead stated: "Victim was transported to [REDACTED] where he was pronounced dead." The petitioner also submitted, among other evidence, a crime report of the incident in which her partner was murdered. The petitioner is not mentioned in the crime report as either a victim or a witness. The petitioner also submitted her personal statement in which she states that she was not present at the time the murder occurred, and that she found out about her partner's murder after he had passed away on the way to the hospital.

Counsel contends that the petitioner's children are direct victims of their father's murder, and therefore the petitioner should qualify as an indirect victim, through the children, of her partner's murder. Counsel further notes that U.S. Citizenship and Immigration Services (USCIS) routinely accepts and approves U nonimmigrant petitions filed by the parents of U.S. citizen children. While it is clear that the petitioner and her children have been affected by the murder, they do not meet the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14). First, the petitioner was not married to her partner and, therefore, cannot qualify as a spouse. Second, because the children are U.S. citizens, they are ineligible for U nonimmigrant status. Section 101(a)(15)(U) of the Act. Counsel asserts that the children are indirect victims of their father's murder and, therefore, the petitioner should be able to obtain relief through them. However, there is no provision under the statute or regulations that would allow the petitioner to meet the victim definition at 8 C.F.R. § 214.14(a)(14) by virtue of her relationship as the mother of a murder victim's children. Counsel for the petitioner asserts that the petitioner is disadvantaged because her children are U.S. citizens and, therefore, cannot meet the victim definition at 8 C.F.R. § 214.14(a)(14); however, the AAO observes that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).

Lastly, counsel contends that the petitioner is a direct victim of her partner's murder because she has suffered emotional harm as a result of the murder, and she should be considered a "direct bystander victim." The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). *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). The AG Guidelines 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. *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. The evidence shows that the petitioner was not present at the time of the murder and only learned of it later when she called a relative to find out what hospital her partner was taken to, and was informed that he had passed away. Although the record shows that the petitioner has been greatly affected by the murder of her

partner, there is no support for counsel's claim that the petitioner was directly or proximately harmed as a bystander to the criminal activity perpetrated against her partner. The petitioner has, therefore, failed to show that she is the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.¹

Conclusion

As the petitioner did not establish that she met the definition of "victim of qualifying criminal activity" at 8 C.F.R. § 214.14(a)(14), she has also failed to establish that she meets the other eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. The petitioner is consequently ineligible for U nonimmigrant classification and her petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.

¹ Counsel also requests that USCIS address the evidence that the petitioner suffered substantial physical or mental abuse; however, as the petitioner has not shown that she was the victim of a qualifying crime, she consequently cannot satisfy subsections 101(a)(15)(U)(i)(I)-(IV) of the Act, as they rely on her having been a victim of a qualifying crime.