



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

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

In Re: 19239643

Date: APR. 27, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 a subsequent combined motion to reconsider and motion to reopen. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence and asserts her eligibility for U nonimmigrant status. We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further consideration and the issuance of a new decision.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish 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. 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. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(1), (4); *Matter of Chawathe*, 25 &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 their victimization as well as any additional evidence they want USCIS to consider to establish that they are a victim of qualifying criminal activity and have 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, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner filed the instant U petition, seeking U nonimmigrant status as a victim of the qualifying criminal activity committed against her daughter, who was under 21 years of age at the time the crime occurred. The record demonstrates that the Petitioner's daughter was the victim of sexual assault over a period of about two years beginning in 2002 when she was approximately 12 and 13 years old and that the perpetrator had been the Petitioner's partner. The underlying police report, which set forth an account of the criminal activity consistent with the accounts provided in the Supplement B forms, indicated that the daughter was 14 at the time the crime was reported. The initial Supplement B, filed with the U petition and signed in 2015 by a detective in the [redacted] California Police Department (certifying official), indicates that when the Petitioner learned of the assault in 2004, she called the police and provided a description of the perpetrator to law enforcement. The Supplement B also states that she made her daughter, the direct victim, available to law enforcement for questions about the sexual assault. A second Supplement B, dated 2020 and signed by a different certifying official with the same police department, specifically attributed the perpetrator's eventual prosecution and conviction to the Petitioner's help and support.

The Director denied the U petition, concluding that the Petitioner did not establish that she had suffered direct and proximate harm as result of being a victim of qualifying criminal activity. The Director also determined that the Petitioner did not possess firsthand knowledge of the details concerning the qualifying criminal activity upon which the U petition was based. Further, the Director found that the Petitioner's helpfulness to law enforcement was limited to secondhand information from the victim, her daughter. The Director affirmed these findings in denying a subsequent motion to reopen and reconsider.

A. The Petitioner Is a Victim of Qualifying Criminal Activity

To establish eligibility for U nonimmigrant classification, petitioners must show that they are victims 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 (listing 28 qualifying criminal activities); 8 C.F.R. §§ 214.14(a)(9) (listing 28 qualifying criminal activities) and 214.14(a)(14) (defining "victim of qualifying criminal activity"). The crime at issue in this case, sexual assault, 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 denying the U petition and a subsequent motion, the Director determined that, although the Petitioner had suffered psychological pain in relation to the crime of which her daughter was a victim,

the Petitioner herself was not a victim of qualifying criminal activity as she did not establish that she suffered direct and proximate harm as a result of the qualifying crime, as contemplated by 8 C.F.R. § 214.14(a)(14). The Director also determined that the Petitioner was not a victim of qualifying criminal activity based on a familial relationship with a direct victim who is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide assistance to law enforcement. 8 C.F.R. § 214.14(a)(14)(i). Specifically, the Director concluded that the Petitioner's daughter, the direct victim, was not incompetent or incapacitated because she was able to provide information concerning the criminal activity and was helpful to law enforcement in the investigation and prosecution of criminal activity.

On appeal, the Petitioner contends that she is a victim of the qualifying crime perpetrated against her daughter, consistent with 8 C.F.R. § 214.14(a)(14)(i), because she is the parent of a minor victim who was under 21 years of age when the criminal activity occurred and was "incompetent or incapacitated" and therefore unable to provide information for, or be helpful in, the investigation or prosecution of the criminal activity as required.¹ She asserts that the Act and U regulations presume her daughter's incapacity and incompetency because she was under 16 years of age at the time of the qualifying criminal activity. In response to the Director's determination that the Petitioner's daughter was not incapacitated because she was available and provided all the necessary information to law enforcement in the investigation and prosecution of the criminal activity, the Petitioner contends that she, not her daughter, was the one who called the police to report the crime, gave the police permission to take a declaration from her daughter, and provided information to law enforcement about the perpetrator herself. Finally, the Petitioner further argues that her daughter was also incompetent and incapacitated as result of the trauma from the sexual assault she experienced.

As noted above, in order to establish that she qualifies as a victim under 8 C.F.R. § 214.14(a)(14)(i), the Petitioner must establish that the direct victim, her daughter, was incapacitated or incompetent and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime, as sections 101(a)(15)(U)(i)(II) and (III) of the Act and the corresponding regulations at 8 C.F.R. §§ 214.14(b)(2), (3) require. Neither the Act nor the regulations define "incapacitated" or "incompetent." However, the referenced statutory provisions relating to possession of information and helpfulness, along with the related regulations, presume a victim's incapacity where they are under 16 years of age, and in such instances, authorize a parent, guardian, or next friend of the victim to possess the requisite information regarding a qualifying crime and provide the required assistance to law enforcement on behalf of the victim. Sections 101(a)(15)(U)(i)(II) and (III) of the Act; 8 C.F.R. §§ 214.14(b)(2), (3). For purposes of 8 C.F.R. § 214.14(a)(14)(i), USCIS therefore also presumes incapacity or incompetency for purposes of providing information and assistance to law enforcement in the investigation and prosecution of the criminal activity as the Act requires, if the direct victim is under 16 years old.

A presumption of incapacity or incompetency due to the direct victim being under 16 years of age may be overcome if the evidence plainly indicates that the direct victim is not incompetent or incapacitated

¹ Alternatively, she asserts that while she is a victim of qualifying criminal activity based on her familial relationship to the direct victim, she also qualifies as a victim under 8 C.F.R. § 214.14(a)(14) because she otherwise suffered direct and proximate harm as a result of the qualifying crime against her daughter. Given our determination that the Petitioner established that she is victim based on her family relationship with the direct victim, we do not reach the Petitioner's arguments on this issue.

despite their minor age. The direct victim's provision of some assistance in the investigation or prosecution does not necessarily preclude a determination that the direct victim was, ultimately, incompetent or incapacitated. Rather, USCIS may assess the direct victim's incompetency or incapacity considering factors such as the level of participation of the direct victim in the investigation or prosecution, the level of participation of the "parent" victim, the "parent" victim's role in supporting the direct victim, and whether the direct victim was granted U-1 status, when applicable. The fact that the totality of evidence in the record can overcome the general presumption that a direct victim is incompetent or incapacitated is not a burden-shifting scheme. The burden of proof remains with the petitioner to establish all eligibility requirements for U nonimmigrant status. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375.

Contrary to the Director's finding, although the Petitioner's daughter, the direct victim, provided information to law enforcement in the investigation and prosecution of the criminal activity against her, this is not sufficient to rebut the presumption of her incapacity or incompetency in this case for purposes of 8 C.F.R. § 214.14(a)(i). The record reflects that at the time the criminal activity was reported, the Petitioner's daughter was 14-years-old and pregnant with the child of the Petitioner's 35-year-old partner, who had been sexually assaulting her for over a year and a half. Further, the underlying police report indicates that the Petitioner initiated the reporting of the crime, gave her consent to her daughter being interviewed, and provided necessary details to law enforcement, including that her partner had sexually abused and impregnated her daughter and information as to how to locate her partner. The report also reflects that the Applicant, after learning of her daughter's pregnancy three days earlier, had actively made attempts to obtain information from her daughter about who had impregnated her daughter and upon learning it was the Petitioner's partner, reported him to the police the same day after confronting the perpetrator and obtaining an admission from him. Additionally, the record demonstrates the psychological trauma the Petitioner's daughter experienced during the period she was being sexually abused up to the time the crime was reported. The police report describes the Petitioner's daughter as crying during the interview and as stating that she "had strong feelings" for the perpetrator. A declaration from the Petitioner's daughter before the Director described the psychological trauma and fear she suffered as a result of being sexually assaulted over a period of nearly two years between the ages of 12 and 13, how she took "pills to calm" herself, and being sent to a "clinic" during that period for fear she could die. She explained that out of fear, she did not tell her mother what was happening until she got pregnant. She also stated that it was her mother who explained everything that happened to the police and that she did not remember the details of speaking with the police herself, consistent with the police report. Finally, the certifying agency, in the 2020 Supplement B, specifically attributed the successful prosecution and conviction of the perpetrator to the Petitioner's helpfulness. Consequently, the record demonstrates the Petitioner's actions ensured that the criminal activity against her minor daughter was detected, reported, investigated, and prosecuted.

Accordingly, the record as a whole does not rebut the presumption of the direct victim's incapacity or incompetency. The Petitioner has therefore established by a preponderance of the evidence that she is a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), as the parent of a direct victim who was under 21 years of age and was incompetent or incapacitated at the time the qualifying crime occurred.

B. The Petitioner's Possession of Information and Helpfulness

As noted above, U petitioners must 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. Sections 101(a)(15)(U)(i)(II) and (III) of the Act; 8 C.F.R. §§ 214.14(b)(2), (3). With respect to these two requirements, the Director concluded that while the Petitioner provided information to law enforcement about the crime, it was primarily secondhand information learned from the victim and that the Petitioner had no firsthand knowledge of the crime. On appeal, the Petitioner contends that she has submitted requisite evidence to establish that she meets these two statutory and regulatory requirements.

As an initial matter, U petitioners are not required by Act or regulation to possess firsthand knowledge of the crime to satisfy the requirement that they possess information concerning the qualifying criminal activity. *Id.* Likewise, they are not required to possess firsthand knowledge of the crime to satisfy the helpfulness requirement. *Id.* We therefore withdraw the Director's findings to the contrary. The facts in the record, particularly those in the police report, establish that the Petitioner possessed information regarding the qualifying criminal activity, including the perpetrator's name, age, cell phone number, work location, and schedule, and was helpful to them in the investigation and prosecution of the criminal activity. As noted, the Petitioner is the one who reported and provided necessary and relevant information about the criminal activity, including that her minor daughter had been sexually assaulted and impregnated and by identifying the perpetrator. Furthermore, the law enforcement officials who certified both Supplement B forms affirmed that the Petitioner possessed information regard the criminal activity, was helpful in the investigation or prosecution of the qualifying criminal activity, ensured the direct victim was made available to investigators and prosecutors, and is the reason that the perpetrator was successfully prosecuted and convicted. The record therefore sufficiently establishes that the Petitioner possessed information concerning the criminal activity and was helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity, as required.

III. CONCLUSION

As the Petitioner has overcome the Director's grounds for denial of the Petitioner's U petition, the matter will be remanded for analysis of the remaining eligibility requirements, including whether the Petitioner suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity.²

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² Although the Director's initial decision denying the U petition refers to the requirement that U petitioners have suffered substantial physical or mental abuse, the Director did not make a specific finding regarding whether the Petitioner satisfied this requirement in either the initial decision or the subsequent denial of the Petitioner's motion to reopen and reconsider.