



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18349000

Date: MARCH 15, 2022

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), as a victim of qualifying criminal activity. The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was a victim of the qualifying criminal activity. The Petitioner filed an appeal of that decision to our office. On appeal, the Petitioner submits a brief, new evidence, and evidence previously in the record. The Administrative Appeals Office reviews 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 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; possesses 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.

A “victim of qualifying criminal activity” is defined as 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). Parents and unmarried siblings under the age of 18 of a direct victim, who was under 21 years of age at the time the qualifying criminal activity occurred, will also be considered victims if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and is unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i).

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)(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 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)(i)-(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).

II. ANALYSIS

The record reflects that in [REDACTED] 2014, the Petitioner's 18-year-old son was shot in the leg as he was leaving his friend's home. Medical documentation in the record describes the Petitioner's son's injuries as an avulsion/laceration and a deep abrasion, both located on his right shin, and the treatment indicated as a cleaning of the wound with soap and water, placement of a gauze dressing, and administration of a tetanus shot. The Petitioner filed the instant U petition in February 2016. The Director denied the U petition, concluding the Petitioner did not demonstrate that she was a victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14)(i), as the record did not establish that her son, the direct victim of the qualifying criminal activity, was incompetent or incapacitated. The Director further concluded that the Petitioner did not demonstrate that she suffered direct and proximate harm to establish her victimization under 8 C.F.R. § 214.14(a)(14).

A. The Petitioner Is Not a Victim of Qualifying Criminal Activity under 8 C.F.R. § 214.14(a)(14)(i)

On appeal, the Petitioner first asserts that the Director erred in determining that her son was not incapacitated or incompetent as a result of the qualifying criminal activity. As stated above, parents of a direct victim who was under 21 years of age at the time the qualifying criminal activity occurred will also be considered victims of qualifying criminal activity under section 101(a)(15)(U)(i) of the Act, if the direct victim is incompetent or incapacitated and unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. 8 C.F.R. § 214.14(a)(14)(i). The age of the victim when the qualifying criminal activity occurred is the applicable age in determining eligibility under this definition. See 8 C.F.R. § 214.14(a)(14)(i) (providing that, "[f]or purposes of determining eligibility under this definition, USCIS considers the age of the victim at the time the qualifying criminal activity occurred").

The record demonstrates that the Petitioner's son was the victim of an assault with a firearm which resulted in a gunshot wound to his right leg. The Petitioner's son was 18 years of age at the time of the incident. As such, the Petitioner may only qualify as an indirect victim pursuant to 8 C.F.R. § 214.14(a)(14)(i) if the record establishes that her son was incapacitated or incompetent. The Petitioner asserts that her son was traumatized after being shot and that this trauma would have prevented him from cooperating with the authorities, but "she gave her son, [name omitted], who had just been shot, the courage to cooperate with the police when he was too scared to do so." The Petitioner also contends that because her son provided her with details regarding the criminal activity, if he had been unable to participate in court proceedings, her information regarding the criminal activity would have been instrumental in the court proceedings. The record contains a declaration from the Petitioner's son wherein he stated, "[i]n my young mind I thought that I would protect

myself and my family by just saying nothing to anyone including the police and that me and my family would be left alone by the criminals who had done this to me. Had it not been for my mom, I would have done just that.”

We acknowledge that the Petitioner provided her son with emotional support in the aftermath of his assault, and that the Petitioner’s son was reluctant to cooperate with authorities due to fear of retaliation from the perpetrator(s); however, the record does not demonstrate that Petitioner’s son was incompetent or incapacitated and unable to provide information concerning the criminal activity or be helpful in the prosecution of the crime. Therefore, the Petitioner has not established by a preponderance of the evidence that she was an indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i).

B. The Petitioner Is Not a Victim of Qualifying Criminal Activity Under 8 C.F.R. § 214.14(a)(14)

The Petitioner next contends that she qualifies as a direct victim under the regulations because she suffered direct and proximate harm as a bystander to the qualifying criminal activity perpetrated on her son. The U-related provisions of the Act include, but do not define, the term “victim.” As noted above, while the relevant regulations define a “victim of qualifying criminal activity” as “generally mean[ing] an alien 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.” Looking to the structure, purpose, numerical limitations, and goals of the U nonimmigrant program as set forth by Congress, USCIS concluded 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); Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status* (U Interim Rule), 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (“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.” 72 Fed. Reg. at 53017. 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.*

The preamble to U Interim rule further references “bystanders” to qualifying criminal activity. However, the preamble noted that any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed would be limited, 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 72 Fed. Reg. at 53016 (“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.”). Considering the foregoing, we look to the record to determine if the Petitioner has established by a preponderance of the evidence that she warrants a favorable exercise of our discretion to consider her

a victim of qualifying criminal activity as a bystander to a violent crime who contemporaneously suffered an unusually direct injury.

The evidence in the record indicates that the Petitioner's son was shot while leaving a friend's house. In her declaration, the Petitioner explained:

"I was in the middle of doing laundry when I received a phone call from one of my son's friends . . . he told me that he was very sorry to have to be the one to inform me that my son had been shot. That moment will be etched in my memory for the rest of my life. I dropped the laundry basket I was holding and felt weakness in my knees. I was just sobbing uncontrollably and asking his friend where and how it had happened . . . I was so shocked and distraught that I couldn't even drive. I had the father of my children drive me to the hospital. The ride to the hospital felt like an eternity. My mind was racing and I imagined the worst. I didn't know where my son had been shot, or the gravity of his injuries and felt an incredible sense of hopelessness and frustration. I was not able to control my emotions in front of my daughter and was not able to remain strong for my daughter, who was also very concerned for her brother. When we arrived, we were not allowed to see him right away. We had to stay in the waiting room for a couple of hours, which felt like time without end. I felt like I was having a nervous breakdown. No one in the hospital could give me any information about my son's state. When I was finally able to see my son, I broke down in tears. Doctors informed us that he suffered a gunshot wound on his right leg."

The Petitioner maintains that as a result of her son's assault, she suffers from post-traumatic stress disorder, depression, anxiety, and trouble sleeping, for which she takes medication. She contends that she was not just any bystander, but the mother of the young victim who was shot. We acknowledge, consider, and do not seek to diminish the close relationship the Petitioner maintains with her son and the enduring emotional and mental trauma the Petitioner has suffered as a result of her son's assault. However, the qualifying criminal activity was not committed directly against the Petitioner, she was not present during the crime and did not personally witness the criminal activity as it occurred, and the evidence in the record does not describe the Petitioner suffering any specific concurrent injury, unusually direct or otherwise, as a result of the crime against her son. Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that she warrants a favorable exercise of our discretion to determine that she suffered direct and proximate harm under 8 C.F.R. § 214.14(a). Consequently, she has not established that she 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).

C. The Remaining Eligibility Criteria for U-1 Nonimmigrant Classification

U-1 nonimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that a petitioner was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. Because the Petitioner has not established that she was a victim of qualifying criminal activity, she necessarily cannot establish the other eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she was a victim of qualifying criminal activity. Accordingly, the Petitioner has not established eligibility for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.