



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

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

In Re: 23052513

Date: NOV. 29, 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 he was a victim of qualifying criminal activity. The Petitioner filed a motion to reopen and reconsider and the Director affirmed the initial decision. On appeal, the Petitioner submits a brief and additional evidence. 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 remand this matter for further proceedings consistent with this decision.

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. 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). 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 considered indirect 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). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term “any similar activity” refers to criminal offenses in which the nature and the elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

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 &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, including the Supplement B. 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in December 2015 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) signed and certified by the supervising deputy district attorney in the [redacted] Office of the District Attorney in [redacted] California (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Murder," "Conspiracy to commit any of the named crimes," and "Related Crime(s)," with "robbery" listed as the related crime. The certifying official cited to sections 187 (murder) and 182(a)(1) (conspiracy) of the California Penal Code (Cal. Penal Code) as the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner's son and daughter. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official provided that "[s]even suspects conspired to rob, then shot and killed victim's son and daughter." When asked to provide a description of any known or documented injury to the Petitioner, the certifying official indicated that "[a]s any parent who loses a child to death, the victim felt sorrow, only increased by the violent manner of the deaths and that it was two rather than one of his children."

The Petitioner submitted supporting documentation with his U petition including, but not limited to, his subpoena to testify in the murder trial of his children, the felony complaint against the defendants charged with the murder and robbery of his children, and third-party statements describing the effect on him of the murder of his children. The Director issued a request for evidence (RFE). In the RFE, the Director stated that the Petitioner did not meet the definition of an indirect victim as his children were over the age of 21 when they were murdered, and he did not meet the definition of a victim as he was not present during the criminal activity and therefore did not suffer direct and proximate harm. The Petitioner responded to the RFE with a brief, birth certificates for his children, victim restitution orders from the Superior Court of California, [redacted] and a statement describing the hardship of losing his children.

After considering the evidence in the record, the Director denied the U petition in July 2021, concluding that the Petitioner had not established that he was an indirect or direct victim of qualifying criminal activity. The Director mentioned that when an individual is over the age of 21 at the time of

their murder, only the deceased individual's spouse and children under the age of 21 may be considered indirect victims of the qualifying criminal activity. Therefore, the Petitioner did not qualify as an indirect victim of qualifying criminal activity as his children were both over the age of 21 at the time of their murders. Next, the Director referenced the regulatory definition of victim, which is an individual who has suffered direct and proximate harm as the result of the commission of qualifying criminal activity, and further referenced the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) which state, in part, that emotional harm may be presumed in violent cases where the individual was present during the crime. The Director provided details from the Petitioner's statement, namely that he received a call that something serious was happening at his children's home, he rushed there and upon arrival found out they died, and the police were already at the scene of the crime. The Director determined that the Petitioner was not in the vicinity of the crime when it was committed nor did he witness any aspect of the crime being committed, and therefore he did not suffer unusually direct injuries as a bystander. The Director gave weight to the Supplement B but did not consider it conclusory evidence that the Petitioner met the eligibility requirements. Lastly, the Director acknowledged the victim restitution orders. The Director stated that the Petitioner was a victim of incurring economic loss under California law, and the eligibility requirements to be a victim under that law are different than the eligibility requirements to be a victim for U nonimmigrant status. Therefore, the Director determined that the Petitioner did not establish he was the victim of qualifying criminal activity. On motion, the Petitioner submitted a brief, updated statement, third-party statements, and previously submitted documents. The Director concluded that the grounds of denial were not overcome.

On appeal, the Petitioner asserts that he meets the definition of a direct victim due to being a bystander victim, and the Director erred in requiring his physical presence during the commission of the crime. The Petitioner described the facts supporting his claims, which will be discussed below.

B. 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. The Director correctly determined that the Petitioner was not an indirect victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14)(i), because his children were over 21 years of age at the time of their murders. The Petitioner does not contest this issue on appeal. Rather, the Petitioner asserts that he is a victim of qualifying criminal activity because he suffered direct and proximate harm, and unusually direct injury, as a bystander to his children's murders. The Petitioner cites to and discusses the preamble to the U Nonimmigrant Status Interim Rule in support of 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. 53,014, 53,016 (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,” neither the Act nor the regulations define the term “direct and proximate harm.” On appeal, the Petitioner argues that the definition of this term as laid out in the Mandatory Victim Restitution Act of 1996 (MVRA), the Crime Victim’s Rights Act of 2004 (CVRA), and the AG Guidelines is applicable to his case. 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 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).¹ The Director referenced the AG guidelines, which provide that emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence. The Petitioner notes the AG guidelines also provide that “[i]n all other cases, emotional harm should not be presumed in the absence of physical harm...but rather the existence of cognizable emotional harm should be determined on a factual, case-by-case basis.” The Petitioner therefore contends, under this broad formulation, he meets the direct and proximate harm requirement.

In the context of the administration of, and purpose behind, the 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).

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”); New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,017 (“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). New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,016.

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

¹ The AG Guidelines were originally published in May 2005; however, they were updated in October 2011 to reflect current statutory provisions, recognize the technological and legal changes that have taken place since the previous Guidelines were promoted, and incorporate best practices.

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.” *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 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 (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 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 who had a qualifying crime committed against them. 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 (providing 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 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 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 New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. at 53,016 (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. An example of an unusually direct injury suffered by a 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.”).

2. The Petitioner Suffered Direct and Proximate Harm as a Result of His Children's Murders

In the present case, the Petitioner has established that a favorable exercise of discretion is warranted to determine that he suffered direct and proximate harm as a result of his children's murders and may be considered a victim for U nonimmigrant purposes.

First, the record establishes that the Petitioner had a close relationship with his children, and he was in close physical and temporal proximity to the murders of his children. In 1994, the Petitioner moved to the United States with his children, he raised them as a single father for many years, his children started renting a place together shortly before their murders, they came over to his place every day, and he worked with his son for many years up until his death. Supporting documentation in the file, including an article on their murders and the Petitioner's subpoena, indicate that the Petitioner and his children lived near each other. The Petitioner states that his daughter was at his house on Friday night, just hours before the murder, she described concern over her brother's new group of friends, and she told his wife that she had been followed that night to their house. The Petitioner's statements in conjunction with his psychotherapist's letter reflect that early on Saturday morning he was called by his children's landlord who told him to rush to their house. The Petitioner rushed to his children's house thinking one might have been ill, but when he arrived, the police were there, the house was taped off, and he learned his children had been murdered. After a few hours of waiting outside the house, the Petitioner saw his deceased children as they were brought outside. The police incident report indicates that the murders occurred a little before five o'clock on Saturday morning.

Second, the Petitioner has established that his children's murders were particularly violent. The police incident report provides that the victims were shot in the back of the head, they were found with their faces down in pools of blood, and their hands were tied behind their backs with duct tape. Lastly, the Petitioner has established that he suffered unusually direct injury as a result of his children's murders. In support of this, the record includes the Petitioner's personal statements, third-party statements, a psychotherapist's letter, and a victim's advocate statement. The documents in the record describe the Petitioner's feelings of regret, prolonged bereavement, struggles with depression, and overall emotional and psychological injury he suffered because of his children's murders. The victim's advocate from the Office of the District Attorney, [REDACTED] states that the Petitioner shared "the powerlessness he felt knowing that he could have given his life to save his children...[and he] has struggled with depression throughout this time." The Petitioner told his psychotherapist "[a]s I was standing outside, I saw them taking away two big white bags, my kids' corpses..." The psychotherapist states that the Petitioner broke down many times during their sessions, conveyed a sense of longing and despair, and expressed how much he loved his children. The Petitioner also had to distance himself from his daughter's son, who was in the house at the time of the murders, as it was not safe for his daughter's son to remain in the area. Furthermore, the psychotherapist relates that the Petitioner feels guilty for not being with his children when they were killed, has difficulty accepting what happened, and experiences restless sleep and anhedonia. The record also includes evidence that the Petitioner was prescribed medication to help him sleep and for his prolonged bereavement process.

Viewed in the totality, the evidence of the Petitioner's physical and temporal proximity to his children's murders, the violent nature of the crimes, and the unusually direct injury he suffered as a result establish that his experience of his children's murders was akin to that of a victim of the offense. The Petitioner has established, by a preponderance of the evidence, that he warrants a favorable

exercise of our discretion to determine that he 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 he 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 the entry of a new a decision consistent with the foregoing analysis, which if adverse, shall be certified to us for review.