



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

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

In Re: 24847581

Date: FEB. 15, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 Vermont Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity or that she suffered substantial physical or mental abuse. The matter is now before us on appeal. 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 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.

The regulation at 8 C.F.R. § 214.14(a)(14) defines a "victim of qualifying criminal activity" as one who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. A spouse, unmarried 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 (hereafter referred to as an "indirect victim") if 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).

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 their helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. 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). 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, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed her Form I-918 in 2016 after her partner and the father of her children was murdered in 2013 during an armed robbery at a gas station. Evidence submitted in support of the Petitioner's Form I-918 indicated that the Petitioner's partner was shot during a robbery at a gas station and that he died shortly thereafter at a hospital. The evidence also indicates that the Petitioner was at her home when she received a call from her brother-in-law who notified her of the circumstances. The Petitioner's counsel provided additional information in an initial cover letter and in response to a request for evidence claiming that the Petitioner went to the gas station and spoke to the police who were investigating and who advised her that her partner had been shot, and that she subsequently went to the hospital where doctors were operating. The Petitioner's counsel further stated that the Petitioner identified her partner at the hospital and later attended three hearings related to the prosecution of the assailant. An updated Supplement B submitted in response to a request for evidence explains that the Petitioner was a cooperative witness with the District Attorney's office throughout the prosecution.

As noted above, the Director denied the Petitioner's Form I-918 after concluding that she was not a victim of qualifying criminal activity. The Director specifically determined that the Petitioner was not the direct victim of the crime, and that because she was not married to the direct victim, she could not be classified as an indirect victim. The Director then concluded that the Petitioner had not established that she suffered direct and proximate harm to establish her victimization under 8 C.F.R. § 214.14(a)(14). The Petitioner does not contest the Director's determination that she was not a direct or indirect victim, but instead asserts that she has established her eligibility because she suffered an unusually direct injury as a result of the murder of her partner such that she qualifies as a "bystander" victim.

B. Bystander Victim

USCIS 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. 53014, 53016 (Sept. 17, 2007). The regulation at 8 C.F.R. § 214.14(a)(14) defines a "victim of qualifying criminal activity" as one who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. We note that the term "direct and proximate" as used in the definition of victim for U nonimmigrants 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). We also 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 criminal activity 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 53017 (“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, “direct and proximate harm” will generally encompass 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 53016 (“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.”). Thus, any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed is 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 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 evidence in the record to determine if the Petitioner has established that she warrants a favorable exercise of our discretion to consider her a victim of qualifying criminal activity as a bystander to a particularly violent crime who concurrently suffered an unusually direct injury. We note that neither the police report nor the updated Supplement B describe any injury to the Petitioner as a result of the crime. The Petitioner submitted a psychological evaluation from 2016 wherein she was diagnosed with “Uncomplicated Bereavement,” as well as personal statements discussing ongoing trauma, including difficulty sleeping, financial difficulties, and an understandable fear of going to a gas station.

We acknowledge and do not seek to diminish the enduring emotional and mental trauma the Petitioner has suffered as a result of her partner’s murder. However, 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)(14). In this regard, 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. Moreover, 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 partner. Therefore, the Petitioner has

not established by a preponderance of the evidence 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. Possessing Credible and Reliable Information

The Director also concluded that the Petitioner did not show that she possessed credible and reliable information establishing that she had knowledge of the details of the criminal activity. And even though the Director indicated this conclusion was “not a cause for this denial,” they did state that on appeal the Petitioner must establish that she meets this requirement. Given the ambiguity as to whether the Director’s conclusion was dispositive, and the fact that the Petitioner addresses the issue on appeal, we deem it appropriate to evaluate whether the Petitioner possessed credible and reliable information establishing that she had knowledge of the details of the qualifying criminal activity.

On appeal, the Petitioner asserts that she meets this requirement because she went to the crime scene and spoke with police and answered their questions, identified her partner’s body at the hospital, and attended three court hearings related to the prosecution of the crime. The Petitioner claims in her legal brief that the District Attorney worked with her as she attended the hearings to testify about her partner. In support of her appeal, the Petitioner submitted an updated statement wherein she states that she was at home when her mother notified her that her partner had been shot. She claims that she went to the gas station where she was notified by police that her partner was taken to the hospital and was in the middle of surgery but that she remained at the gas station for approximately one and a half hours while her brother-in-law completed a witness declaration. She arrived at the hospital where her partner was in surgery, but later learned that her partner had, unfortunately, passed away as a result of the gunshot. She remained at the hospital to identify her partner’s body and then returned to her mother’s house to make funeral arrangements. She also states that she attended three hearings associated with the criminal prosecution of the crime.

While we again do not seek to diminish the tragic nature of the crime in this case or the hardship the Petitioner has experienced as a result of it, the record does not indicate that she possessed any specific facts or details regarding the criminal activity that led to her partner’s death. The record reflects that the Petitioner was not a witness to the crime perpetrated against her partner but instead was notified of the circumstances by family members and appeared at the crime scene after the qualifying criminal activity occurred. While the Petitioner remained at the crime scene and answered police questions, the reason for her remaining was to allow her brother-in-law, who did witness the crime, to complete a witness declaration. To the extent police asked the Petitioner whether she knew what had occurred, the nature of the questions was to ensure she was informed about the condition and location of her partner rather than for eliciting information to be used in the investigation or prosecution of the crime. The record does not reflect that the Petitioner was asked for or provided any statement to police about the criminal activity that led to her partner’s death.

We acknowledge that the Petitioner attended three criminal hearings and was in contact with the District Attorney during the prosecution of the crime, but the record reflects that this contact was made in order to advise the Petitioner on the posture of the investigation and prosecution, for instance, to notify her that the suspect had been arrested, that her brother-in-law was needed to identify the suspect, and of upcoming hearings, and to explain the plea and sentence imposed on the assailant. These circumstances are insufficient to establish that she possessed information about the criminal activity

that occurred. The Petitioner's legal brief includes a claim that she testified about her partner in a sentencing hearing, but the brief clarifies that she testified "to explain the effect of the loss of life," and does not reflect that her testimony was related to the facts surrounding the commission of the crime. Additionally, we note that the claim contained in her legal brief regarding her testimony is of limited evidentiary value as the brief was not written by the Petitioner and the nature and purpose of the testimony is not discussed elsewhere in the record. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (explaining that statements in a brief, motion, or notice of appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (noting that statements or assertions by counsel are not evidence). Finally, while the Supplement B indicates the Petitioner was a cooperative witness, this description lacks sufficient detail regarding the nature of her cooperation or how she may have acted as a witness and therefore does not support the claim that she possessed information about the qualifying criminal activity. Based on the above, the Petitioner has not established by a preponderance of the evidence that she possessed credible and reliable information establishing that she had knowledge of the details of the qualifying criminal activity.

III. CONCLUSION

The Petitioner has not met her burden to demonstrate that she was the victim of qualifying criminal activity or that she possessed credible and reliable information establishing that she had knowledge of the details of the criminal activity. The Petitioner is therefore not eligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.