



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 1114497

Date: SEPT. 10, 2020

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). The Director concluded that the U petition was not approvable because the record did not establish the Petitioner was the victim of qualifying criminal activity. On appeal, the Petitioner asserts her eligibility for U nonimmigrant status. 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; 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. 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)(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 record demonstrates that the Petitioner's son was murdered in New Jersey in [] 2005, when he was 21 years old.¹ The Supplement B indicates that the Petitioner's son was stabbed with a knife in the abdomen during an altercation. The Petitioner was in Virginia at the time of the murder. The Supplement B states that the Petitioner "was traumatized" by the crime.

A. The Petitioner is Not a Victim of the 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)(14) (defining "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.

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).

The Director determined that the Petitioner was not a victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14) because although the Petitioner suffered negative effects on her physical and mental health as a result of her son's murder, she was not the person against whom that crime was committed or present at the time of the crime such that she could be considered a victim of the crime for U purposes. Because the Petitioner was the parent of the murder victim, and her son was 21 years old at the time of his death, the Director additionally concluded that the Petitioner did not qualify as a victim of his murder under 8 C.F.R. § 214.14(a)(14)(i), which limits such classification in pertinent part to parents of direct victims under the age of 21 at the time the qualifying criminal activity occurred.

On appeal, the Petitioner contends that she is a victim of the crime perpetrated against her son because she suffered severe, long-lasting physical and mental injury as a result of his murder. We recognize that the Petitioner has experienced significant grief, and related mental and physical health effects, as a result of her son's death. However, the record as supplemented on appeal does not establish that the Petitioner was a victim of her son's murder.

¹ The death certificate lists the Petitioner's son's date of birth as [] 1983, while his birth certificate lists [] 1983. Regardless, the Petitioner's son was 21 years old at the time of his death on [] 2005.

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 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.” The Petitioner relies on dictionary definitions of the terms “proximate” and “victim,” arguing that she was directly and proximately harmed by the crime against her son. However, unlike the broad formulation that common definitions of the terms “proximate” and “victim” may imply, 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).

The U nonimmigrant 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 criminal activity is “deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity”); 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, beyond the immediate family members of deceased, incompetent, or incapacitated victims specified in 8 C.F.R. § 214.14(a)(14)(i), 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. In the preamble to the U Nonimmigrant Status Interim Rule (Interim Rule), 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. 53014, 53016 (Sept. 17, 2007). The preamble references, most relevantly, the Mandatory Victim Restitution Act of 1996 (MVRA), the Crime Victim’s Rights Act of 2004 (CVRA), and the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) as “informative resource[s] in the development of th[e] . . . definition of victim” at 8 C.F.R. § 214.14(a)(14). See 72 Fed. Reg. at 53016. 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). The AG Guidelines consider an individual to be a “victim” of an offense if “the alleged harm [was] a . . . ‘but-for’ consequence” and “reasonably foreseeable result of the charged offense.”² AG Guidelines at 8-9 (rev. May 2012). While the MVRA, CVRA, and AG

² The U.S. District Court for the Eastern District of New York likewise issued a decision concluding that “direct and proximate harm,” as provided for in 8 C.F.R. § 214.14(a)(4), was unambiguous and should be interpreted consistent with the interpretation of the term in the MVRA, CVRA, and common law. *Morris v. Nielsen*, 374 F.Supp.3d 239, 252 (E.D.N.Y. 2019). However, the District Court’s decision in *Morris* is binding on only the parties before it and, accordingly,

Guidelines speak to the mandatory rights of, and provision of restitution to, victims of crimes, these sources do not address, nor 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 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." 72 Fed. Reg. at 52016. 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 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 that would be eligible for the benefit by placing a cap on the number of principal U nonimmigrant visas available per fiscal year. Section 214(p)(2) of the Act limits principal U 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.³ 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 classification.

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 against whom qualifying criminal activity is directly committed. 8 C.F.R. § 214.14(a)(14); 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."). 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

does not bind USCIS in future adjudications. Moreover, in contrast to the broad precedential authority of the case law of U.S. circuit courts of appeals, we are not bound to follow the published decision of a U.S. district court. See *Matter of K-S-*, 20 I&N Dec. 715, 715, 719 (BIA 1993) (holding that the Board of Immigration Appeals is not bound by the decision of a U.S. district court within the same district).

³ We additionally note that, to date, the U nonimmigrant status program is vastly oversubscribed, with pending principal U petitions reaching 153,142—a number over 15 times the annual statutory cap—and a total pending case load of 256,868 petitions. Department of Homeland Security, USCIS, Form I-918, Petition for U Nonimmigrant Status (July 2020), available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

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.

Relatedly, when referencing a “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 would be applied in limited 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 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.”).

2. The Petitioner Did Not Suffer Direct and Proximate Harm as a Result of the Commission of Qualifying Criminal Activity

The Petitioner has not established, by a preponderance of the evidence, that she suffered direct and proximate harm as a result of the murder of her son. The Petitioner was in another state when her son was killed and she was not contemporaneously aware of any risk to him. She learned of her son’s murder later, from another person. Although the Petitioner suffered grief as a result of the tragic loss of her son, and that grief has worsened her mental and physical health, she has not established that she warrants a favorable exercise of discretion to consider her a victim for U nonimmigrant purposes as a bystander to a violent crime who contemporaneously suffered an unusually direct injury.

In her personal statement with her U petition, the Petitioner described her close relationship with her son and stated he helped support the Petitioner financially. She claimed that her son moved from Virginia to New Jersey to look for work and she spoke with him by phone on a Saturday night. The next morning, she received a call that her son had died. She struggled financially without her son’s support and had to raise money to travel to New Jersey and pay for his burial arrangements. It was very difficult for her to gather his belongings and accept that she would not see him again. The Petitioner further indicated that she fell “into a severe stage of depression” after her son’s death, and was diagnosed with osteoporosis a couple of years later. In a supplemental statement with her Form I-192, Application for Advance Permission to Enter as Nonimmigrant, she stated that she testified against her son’s killer and he was sentenced to 30 years in prison but escaped and returned to Guatemala, where he has been seen in her village and has threatened to kill her and her children. In a Victim Impact Statement the Petitioner submitted in response to a request for evidence from the Director, the Petitioner recalled that she learned of her son’s death when her brother called her. She asserted that her “life has been a living nightmare since [her] son was murdered” and she suffers depression, anxiety, and physical symptoms. She noted that she had neck pain and arthritis before her son’s murder, but both became worse after his death due to stress. She stated she cannot work due to the pain, and therefore lacks health insurance and cannot obtain medical care.

The Petitioner’s therapist previously submitted a psychological report noting that the death of the Petitioner’s son “exacerbated the longstanding and untreated trauma of domestic abuse” she

experienced with her ex-husband, and that since her son's death she "has been increasingly incapacitated by her physical and emotional symptoms" The therapist diagnosed the Petitioner with post-traumatic stress disorder and stated that she required ongoing mental health treatment. The Petitioner's spouse, sister, brother-in-law, pastor, and friends also submitted letters confirming that the Petitioner suffered pain and sorrow after the death of her son. Medical records the Petitioner submitted show that she was evaluated for neck pain, numbness in her extremities, and back pain.

The Petitioner asserts on appeal that although she was not present at the time of her son's death, she suffered unusually direct injury, including mental and physical harm, which began immediately after her son was murdered, and the stress of her son's death worsened her existing trauma and physical ailments. She asserts that the Director interpreted the regulatory definition of victim too narrowly because the AG Guidelines provide USCIS discretion to evaluate bystander claims on a case-by-case basis. However, as discussed above, USCIS only addressed the AG Guidelines in the preamble to the U Interim Rule as an "informative resource." 72 Fed. Reg. at 53016. The AG Guidelines are not cited in the Act or in the U nonimmigrant implementing rule at 8 C.F.R. § 214.14 and do not grant USCIS any particular authority. Furthermore, USCIS has sole discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed and, as explained in the preamble to the U Interim Rule, will do so only in limited circumstances. 72 Fed. Reg. at 53016. While we do not seek to diminish the significant grief the Petitioner experienced due to the death of her son, she acknowledges on appeal that she was not present at the time of his murder. The record further indicates that she was not contemporaneously aware of any risk to her son or involved in the incident in any way; instead, she was in another state and learned of the incident by phone after it occurred.

Furthermore, the evidence indicates that the Petitioner's grief over her son's murder worsened, but did not directly cause, existing physical and mental health conditions from which she already suffered, including neck pain, arthritis, and trauma from past abuse she suffered. While we do not discount the serious harm that the Petitioner or any family member of a murder victim suffers, the record does not show that her situation is comparable to a bystander concurrently suffering unusually direct injuries while witnessing the commission of a violent crime. 72 Fed. Reg. at 53016-17 (describing a pregnant bystander who suffers a miscarriage while witnessing a violent crime as an example of when USCIS might exercise discretion to treat a bystander who suffers unusually direct injury as a victim). Viewed in the totality, the Petitioner has not met her burden of establishing that she warrants a positive exercise of our discretion to determine that she suffered direct and proximate harm as a result of having been a victim of the murder of her son, as 8 C.F.R. § 214.14(a)(14) requires.

B. 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. As the Petitioner has not established that she was a victim of qualifying criminal activity, she has not met that requirement as well as the other eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act.

III. CONCLUSION

The Petitioner has not met her burden of establishing, by a preponderance of the evidence, that she was the victim of qualifying criminal activity. Accordingly, she is ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act.

ORDER: The appeal is dismissed.