U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 1175515

Date: SEPT. 1, 2020

Appeal of Vermont 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). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief and copies of previously submitted documents. The Administrative Appeals Office reviews 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, the matter will be remanded to the Director for the issuance of a new decision.

I. LAW

To qualify for U-1 nonimmigrant classification, a petitioner must establish that he or she: has 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 has been helpful, is being helpful, or is 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)(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 his or her victimization as well as any additional evidence he or she wants USCIS to consider to establish that he or she is a victim of qualifying criminal activity and has 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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The record shows that the Petitioner's son was shot in the face and head multiple times by an unknown perpetrator while sitting in his vehicle in [redacted] 2009. The Petitioner assisted law enforcement in the investigation of the offense and filed the instant U petition on that basis in January 2014.

A. Victim of Qualifying Criminal Activity

To establish eligibility for U nonimmigrant classification, the Petitioner must show that she was a victim 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 (laying out the 28 statutorily enumerated qualifying crimes); 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).

In this case, 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)(i), because her son was over 21 years of age at the time of his murder. The Petitioner did not contest this determination before the Director, and likewise does not contest it on appeal. Instead, the Petitioner asserts that she is a victim of qualifying criminal activity because she herself suffered direct and proximate harm, and unusually direct injury, as a bystander to her son's murder. She 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. 53014, 53016 (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," 8 C.F.R. § 214.14(a)(14), 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), the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) "should be authoritative in this context . . . ." 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 Petitioner urges that, under this broad formulation, she "should . . . meet 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). A detailed explanation follows.

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"); 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."). 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). 72 Fed. Reg. at 52016.

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 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 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

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

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.[2] 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); 72 Fed. Reg. at 53016 (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 72 Fed. Reg. at 53016 (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 Her Son's Murder

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

As a preliminary matter, the preponderance of the evidence indicates that the Petitioner lived with and had a close relationship to her son and was in close proximity to his murder at the time it occurred. In her personal statements in the record before the Director, the Petitioner explained that her son lived

[2] We additionally note that, to date, the U nonimmigrant status program is vastly oversubscribed, with pending U-1 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.

with her, supported her both emotionally and financially in many ways, and was her "first child, . . . [her] pride and joy." The Petitioner further stated that she was at home with her son "merely a matter of minutes before his death," and near to the crime scene when it occurred. She explained that, on the day of her son's murder, they left their home at the same time in separate vehicles; the Petitioner and her husband were driving to deliver food to a friend, and her son was driving to the local library to pick up homework for his nephew. The Petitioner stated: "We were headed the same direction as [my son]. . . . There was lots of traffic. . . . My husband asked rhetorically why there was so much traffic. We never imagined it had anything to do with our son . . . . We later learned that the street was blocked off after the shooting." Maps in the record before the Director indicate that, at the time of the Petitioner's son's murder, the Petitioner and her husband were in close proximity to the scene of the crime.

Moreover, the Petitioner has established that her son's murder was particularly violent. The Supplement B submitted with the Petitioner's U petition provided that, when the Petitioner's son stopped his vehicle at an intersection, the driver of the car behind him "got out of his vehicle . . . became upset and then shot [him] in the face at least once while he sat in his car." The Supplement B then provided that "[p]aramedics could not save his life, and he was declared dead . . . at the scene of the crime." A death certificate in the record before the Director confirms that the cause of death was "gunshot wounds to the face [and] head," and an autopsy confirmed that "gunshot wounds [we]re present on the lower face, two on the left consistent with entrance wounds and one on the right consistent with an exit wound."

The Petitioner has also established that she suffered unusually direct injury as a result of her son's violent murder. The Petitioner's personal statements, the psychological evaluation, and other mental health documents in the record before the Director describe the Petitioner's feelings of regret based on having seen her son just before his death and been so close to the location of the murder; "If I had been driving with [my son], maybe I would have been able to save him. If I had allowed [my son] to take my car, maybe he would still be alive."

The Petitioner also submitted evidence of the severe emotional and psychological injury she suffered as a consequence of her son's death. In her personal statements in the record before the Director, the Petitioner emphasized that she lived in a "state of shock" immediately following her son's murder; "I felt as if I were living in a nightmare and I would awake to return to my previous life. I would lock myself in my room and scream and cry away my pain. I lost all appetite and would not eat. I lost approximately 30 pounds." The Petitioner further stated that, with time, the state of shock became a state of severe depression she "cannot escape," that she struggles with persistent memories of the crime "almost daily," and that the triggers "haunt [her]" and are "almost unbearable." She stated that, "[t]o this day, [she has] not been able to accept that [her son] is dead." A statement from the Petitioner's husband in the record before the Director reiterated that their son is "still alive in [the Petitioner's] mind. It is the only way she can continue in this world." A May 2017 letter from the law enforcement official who certified the Supplement B submitted with the Petitioner's U petition stated that he "st[ood] by his signature on the Supplement B" stating that the Petitioner was a victim of her son's murder, clarifying that she "received mental health services through the California Victim Compensation Program in attempt to treat depression due to her son's murder" and "still struggles to this day with the tragic loss of her son." A psychiatric evaluation and other mental health documents in the record before the Director diagnosed the Petitioner with major depressive disorder (MDD), post-

traumatic stress disorder (PTSD), and generalized anxiety disorder (GAD) as a result of her son's murder, and explained that, even years after its occurrence, her "symptoms represent a severe disturbance in her mental/emotional equilibrium and an extreme disruption to her relationships with other people[,]" as well as "some signs of derealization, feeling out of touch with things around her . . . a more severe trauma-related symptom . . . ." Medical documents corroborate the Petitioner's struggles with depression, and further indicate that the Petitioner suffers from various gastrointestinal issues, headaches, and "visual distortions," which the Petitioner stated she "believe[s] stem from [her son's] murder."

The Petitioner last submitted evidence regarding the additional psychological trauma she suffered due to the nature of the crime, there being no discernable motive for its occurrence, and the perpetrator of the offense never being located or brought to justice. In her personal statements in the record before the Director, the Petitioner explained that her sense of safety was "destroyed" as a result of her son's murder:

> If my innocent son was shot in the face five minutes from our house in broad daylight, the same or worse could happen to me or my other family members at any time. . . . I cannot escape the fact that the person that killed my son . . . remains at large. I cannot escape the fact that my son was shot in the face at a street corner where he did nothing wrong.

The letter from the Petitioner's husband in the record before the Director reiterated that "[k]nowing that [their son's] murderer has never been caught or brought to justice is one of the hardest parts" for the Petitioner; "[m]y wife and I cannot get over the loss of our son, yet the person guilty of the crime can continue living freely." A letter from the Petitioner's son in the record before the Director likewise stated that the Petitioner "continues to suffer because no one has been arrested." The letter from the law enforcement official who certified the Petitioner's Supplement B explained that the investigation was "difficult. Several motives were investigated and cleared. The case was ultimately suspended due to lack of investigative leads."

Viewed in the totality, the evidence of the Petitioner's proximity to her son's murder, the violent and unexplained nature of the crime, and the unusually direct injury she suffered as a result of it indicate that her experience of her son's murder was akin to that of a victim of the offense. The Petitioner has 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 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 she warrants a favorable exercise of our discretion to find that she suffered direct and proximate harm as a result of her son's murder and 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 further proceedings consistent with the foregoing analysis and for the entry of a new decision, which, if adverse to the Petitioner, shall be certified to us for review.