U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4655212

Date: OCT. 2, 2020

Appeal of Vermont 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 Vermont 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 a victim of the qualifying criminal activity. The matter is now before us on appeal. On appeal, the Petitioner resubmits evidence previously in the record and a brief asserting her eligibility. 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, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner filed her U petition in August 2014 with a Supplement B signed and certified by a lieutenant for the [redacted] Sheriff's Department indicating that in [redacted] 2007, the Petitioner was the victim of felonious assault and assault with a deadly weapon under section 245(a)(1) of the California Penal Code. The Supplement B provides that on the date of the incident, the Petitioner's brother was stabbed in the right hand and punched twice in his left bicep. After the attack, he ran to his house and the Petitioner, who was in the house at the time, opened the door to find her brother lying on the ground bleeding. The family then called the police for help.

In response to a notice of intent to deny (NOID) issued by the Director, the Petitioner submitted, amongst other evidence, a second Supplement B signed and certified in July 2018 by a judge from the [redacted] Superior Court, indicating that the Petitioner was the victim of a felonious assault in [redacted] 2008, when a man threatened her with death for her role in the investigation and prosecution of the criminal activity against her brother. The Director denied the U petition, concluding the Petitioner did not demonstrate that she was a direct victim of qualifying activity because the record showed that the Petitioner's brother was the direct victim of the qualifying criminal activity, and she did not establish that she suffered direct and proximate harm sufficient to establish her victimization under 8 C.F.R. § 214.14(a)(14). The Director further concluded that the Petitioner did not demonstrate that she was the victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i) because, although the Petitioner was under the age of 18 at the time of the crime against her brother, the evidence did not establish that he was incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity. Lastly, the Director did not consider the second Supplement B submitted by the Petitioner in response to the NOID, concluding that it was incomplete because it did not list any statutory citation investigated or prosecuted, and it did not involve the same incident upon which her U petition was based.

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 brother was not incapacitated or incompetent as a result of the qualifying criminal activity. As stated above, 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 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) (stating 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 here demonstrates that the Petitioner's brother was the direct victim of the qualifying criminal activity of felonious assault and an assault with a deadly weapon in 2007. At that time, the Petitioner's brother was 16 years old years of age and the Petitioner was 13 years old. As such, the Petitioner may only qualify as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i) if the record establishes that her brother was incapacitated or incompetent. The Petitioner maintains on appeal that because her brother was a minor at the time of his victimization, he should be considered per se incapacitated or incompetent. Although we acknowledge and consider this argument, the referenced statutory provisions, along with the corresponding regulations at 8 C.F.R. § 214.14(b)(2), (3), presume a victim's incapacity where he or she is under 16 years of age, and in such instances, authorize a parent, guardian, or next friend of the victim to possess the requisite information regarding a qualifying crime and provide the required assistance to law enforcement on behalf of the victim. Here, the direct victim, the Petitioner's brother, was not under 16 years of age at the time of the qualifying crime, and therefore, is not presumed to have been incapacitated or incompetent. Moreover, the totality of the evidence in the record likewise does not establish that he was incapacitated or incompetent. As noted by the Director, in the Petitioner's brother's affidavit, he describes not knowing the identities of his attackers or why he was attacked, but relates that he was able to discuss the incident with law enforcement and answer questions, which indicates that he neither incapacitated or incompetent. Accordingly, the Petitioner has not established that she is a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), as the unmarried sibling of a direct victim who was under 21 years of age and incapacitated or incompetent at the time the qualifying crime occurred.

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 brother. 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.*

As asserted by the Petitioner on appeal, 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.").

In this case, as noted above, the Petitioner has not established by a preponderance of the evidence that she was a direct victim of qualifying criminal activity. In an affidavit submitted with her U petition, the Petitioner describes that when the incident in question occurred, her brother, the direct victim, was outside the family home when he was attacked and stabbed in the hand with a pocketknife. After the attack, her brother approached the home, and the Petitioner, inside at the time, heard a bang at the front door. The Petitioner opened the door to find her brother bleeding from his wound. She called an ambulance and spoke to law enforcement upon their arrival. The Petitioner describes feeling panic during the incident but does not disclose any other specific injury she suffered as a result of the incident. The Supplement B corroborates this information. We acknowledge and consider the emotional trauma Petitioner suffered as a result of witnessing her brother bleeding after having been attacked and stabbed in the hand. We also acknowledge and consider the related threats she endured in the months following the attack against her brother. However, as noted by the Director, the subsequent threats and harassment are separate and distinct from the qualifying criminal activity perpetrated against her brother and described in the Supplement B filed with her U petition. In the end, the Petitioner has not established 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), as the qualifying criminal activity was not committed directly against the Petitioner, she did not personally witness the criminal activity as it occurred, and she does not describe concurrently suffering from an unusually direct injury as a result of the crime against her brother. Therefore, considering the evidence in the record, 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).

The Petitioner last argues that the Director erred by not considering the second Supplement B indicating that she was the victim of a felonious assault in [redacted] 2008 because it demonstrates that she was the direct victim of a qualifying crime and establishes her eligibility for the benefit sought. A Supplement B is initial evidence that must be submitted with the U petition. Section 214(p) of the Act (stating a U petition "shall contain a certification from a Federal, State, or local law enforcement official . . . ."); 8 C.F.R. §§ 103.2(b)(1) (providing that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions") and 214.14(c)(2)(i) (stating that a U petition must include the Supplement B as initial evidence). Here, the second Supplement B submitted by the Petitioner was not signed by a certifying official within the six-month period preceding the filing of her U petition in 2014, as required; it was certified several years after filing. Therefore, the Supplement B was not submitted as initial evidence

and does not meet the requirements of the Act and corresponding regulations. Regardless, as noted by the Director, the Supplement B was incomplete as submitted because it did not list any statutory citation investigated or prosecuted as perpetrated against the Petitioner and, critically, did not involve the same incident upon which the Petitioner's U petition was based. Although we acknowledge that the second Supplement B indicates that the Petitioner was threatened with harm for her role in the investigation and prosecution of the criminal activity perpetrated against her brother, and although we remain sensitive to the hardship the Petitioner has endured, USCIS lacks the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Considering the foregoing, the Petitioner has not established error in the Director's decision or otherwise established her eligibility for U nonimmigrant classification.[1]

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.

[1] The determination is without prejudice to the Petitioner's filing of a new U petition, with a properly executed Supplement B certifying her helpfulness in the investigation of qualifying criminal activity perpetrated against her, on the basis of the above-described incident. *See* sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act (requiring that U petitioners have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting qualifying criminal activity, as documented on a certification from the law enforcement official).