



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

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

In Re: 18159569

Date: FEB. 11, 2022

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 matter is now before us on appeal. The Petitioner submits a brief, previously submitted evidence, and reasserts his eligibility for U-1 nonimmigrant classification as the victim of a qualifying crime. 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 the matter 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.

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 burden of proof is on the petitioner 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, 376 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). 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 such evidence. 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 his U petition in May 2015 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed and certified by a Senior Trial Attorney with the [redacted] District Attorney's Office in [redacted] New York (certifying official). The certifying official checked a box indicating that the Petitioner was the victim of criminal activity involving or similar to "Murder," "Attempt to Commit any of the Named Crimes," "Related Crime(s)," and "Other," and cited to sections 125.25(1) (murder in the second degree) and 265.01(2) (criminal possession of a weapon in the fourth degree) of the New York Penal Code (N.Y. Penal Code) as the specific statutory citations investigated or prosecuted as perpetrated against the Petitioner. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official indicated that the "[d]efendant and [an] accomplice ambushed [the Petitioner] and Z-L-,¹ [the Petitioner's] brother-in-law, in an attempt to take [the Petitioner's] life. According to the defendant's own statement, he "attempted to take [the Petitioner's] life because he was angry that [the Petitioner] was dating his ex-wife. During the incident, [the] defendant stabbed Z-L-."² The narrative portion of the police complaint provides further detail regarding the incident including that the responding officers provided aid to "a male stabbed numerous times in the torso," who was later pronounced dead on arrival at [redacted] Medical Hospital. In his affidavits, the Petitioner described the events leading up to Z-L-'s murder. He recalled that he and Z-L- were returning home together. When they arrived at their garage, Z-L- exited the vehicle so that the Petitioner could park the car. After the Petitioner locked his car, he began walking behind Z-L- towards their apartment building. According to the Petitioner, two perpetrators approached Z-L- and began physically assaulting him. The Petitioner recognized one of the perpetrators as X-C-, the former spouse of his partner. He believed that X-C- was going to kill him so he ran from the scene and called 911. Approximately 10 minutes later, the Petitioner returned to the scene. He recalled that Z-L- was gone, but that he saw "pools of blood" inside an area that had been roped off by a police investigator. He claimed that he did not know if Z-L- had been killed or was seriously injured. However, the police later confirmed that Z-L- had been pronounced dead at a local hospital.

In his affidavits, the Petitioner described the profound psychological injuries he suffered as a result of the attack. He stated that he that "[he] wish[ed] to this day that the victim was [him]." He described living with the constant sadness, anger, and guilt that Z-L- died because of him. He stated that it "felt like punishment enough having to replay in [his] mind the part of the attack that he witnessed, and then the aftermath and bloody scene [he] went back to." He stated that, "he sometimes think[s] what would have happen[ed] if [he] had stayed after seeing [Z-L- get attacked. He] would have died himself." A psychological evaluation report accompanying his U petition indicated that a licensed psychologist diagnosed the Petitioner with Posttraumatic Stress Disorder (PTSD), Major Depression

¹ Initials are used to protect the individual's privacy.

² Additionally, the Petitioner provided a letter from a [redacted] Police Department [redacted] detective who confirmed that the Petitioner was the intended victim due to his dating relationship with the perpetrator's former spouse.

(Recurrent, Severe, without Psychotic Features), and Generalized Anxiety Disorder. She recommended ongoing therapy and possible psychopharmacological agents to help the Petitioner manage his anxiety and depression. The Petitioner submitted psychotherapy progress notes indicating that he attended psychotherapy sessions from April 2013 until May 2015.

In response to a request for evidence (RFE) issued by the Director, the Petitioner submitted a supplemental affidavit, a copy of a previously submitted complaint from the [redacted] Police Department, and letters of support from his spouse, sister, and pastor attesting to the trauma he suffered as a result of the crime. In his supplemental affidavit, the Petitioner stated that he had recently become aware of “memory issues that [he] believes are the result of the . . . trauma [of the] attack. Since the attack, [he has] had a hard time remembering things that happened just a day or two before” and has “become forgetful with day-to-day practicalities, like where [he] leave[s] certain things, like [his] wallet.” The Petitioner also reiterated that he continues to be affected emotionally by the attack, noting that “the incident left [him] living in fear for many days and even years after [X-C-’s] arrest. He emphasized that he lost a brother-in-law and a friend because his wife’s jealous ex had tried to kill her new man.” Additionally, the Petitioner expressed difficulty coming to terms with what happened and the fact that his sister and her children had been left without a spouse and father because of him. The letters of support confirmed the mental torment the Petitioner has been experiencing since the attack. His spouse stated that, “[a]lthough it ha[d] been ten years since the murder case, [the Petitioner was] still living with self-blaming [*sic*] and regrets every day for our brother-in-law’s death.” She noted that the Petitioner still suffered from frequent insomnia and nightmares and that “the crime scene ke[pt] showing up in his mind.” The Petitioner’s pastor and sister echoed similar sentiments, noting that the Petitioner was “totally distraught” and “felt sorry that the victim was [his sister’s] innocent husband instead of him.” His sister added that the Petitioner tries his best to care for and love her and her children in various ways to try to make up for what they lost.

In response to a second RFE issued by the Director, the Petitioner submitted a supplemental affidavit, additional psychotherapy progress notes, and a letter from the Petitioner’s niece, among other things. The Petitioner reiterated that the memories of the attack had affected his daily activities and his relationship with family and friends. He maintained that he continued to be affected emotionally by the attack, noting that “all of the anxiety, fear[,] and guilt left him shaken up.” He stated that his friends and family advised him to seek professional help to manage his symptoms which have been exacerbated by his fear of removal if his U visa is not approved. His psychotherapy progress notes confirmed that he continued to receive therapy for his mental health symptoms from 2015 until 2020. In her statement, the Applicant’s niece noted that Z-L-’s murder “had been a severe blow to [her] uncle.” She further noted that the Petitioner is a “changed man” who continues to blame himself for Z-L-’s murder and his inability to make it up to his sister.

After considering the evidence in the record, the Director denied the U petition. The Director first 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 he does not qualify as a victim by virtue of any of the familial relationships to deceased, incompetent, or incapacitated victims specified at 8 C.F.R. § 214.14(a)(14)(i). The Director additionally determined that he did not submit sufficient evidence to establish that he suffered direct and proximate harm and thus could be considered a victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14). The Director acknowledged that the Petitioner suffered due to the murder of his brother-in-law. She also acknowledged that the

evidence indicated that “[the Petitioner] was in fear of his life because he recognized [the attacker], saw the attacker pull out a knife and knew that he was the intended victim” However, the Director concluded that the Petitioner had not established that he was a victim of qualifying criminal activity because he was not present at the time of Z-L-’s murder and returned to the scene after Z-L- had been transported to the hospital.

B. Victim of Qualifying Criminal Activity

As stated above, to establish eligibility for U nonimmigrant classification, the Petitioner must show that he 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).

On appeal, the Petitioner asserts that the Director did not “meaningfully address his bystander victim status” and that he is a victim of qualifying criminal activity because “he suffered ‘unusually direct injuries’ as a result of witnessing a crime at which he was physically present and where he was the intended victim.” He 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). He submits previously submitted evidence including his affidavits from August 2013, August 2014, and January 2020, a letter from the [redacted] Senior District Attorney, and copies of the [redacted] criminal complaint and indictment charging X-C- with murder and criminal possession of a weapon.

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 cites to 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). 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).³

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 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-

³ 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.

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.⁴ 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 His Brother-in-Law’s Murder

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 Z-L-’s murder and may be considered a victim for U nonimmigrant purposes.

The evidence in the record and outlined above establishes that the Petitioner has endured lasting physical and psychological effects from the violent murder forming the basis for his U petition. The fact that the Petitioner was not present for the whole of the events leading up to Z-L-’s murder or returned to the scene after Z-L- had been removed from it does not negate the severity of the psychological injury the Petitioner suffered as a result of it. A review of the record indicates that in

⁴ We additionally note that, to date, the U nonimmigrant status program is vastly oversubscribed, with pending U-1 petitions reaching 170,805—a number over 17 times the annual statutory cap—and a total pending case load of 285,255 petitions. Department of Homeland Security, USCIS, Form I-918, Petition for U Nonimmigrant Status (December 2021), *available at* <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

2008, the Petitioner was present when his brother-in-law, with whom he lived and worked, was fatally stabbed with a knife—an offense that was investigated as a murder in the second degree under New York law. When the Petitioner returned to the scene of the attack, he saw pools of blood and immediately knew that something serious had happened to Z-L-. In numerous affidavits, the Petitioner complained of struggling with persistent feelings of guilt and self-blaming since the attack, wishing he had been the victim instead of Z-L-. His family members confirmed that the attack changed the Petitioner’s personality and that he repeatedly told them that he wished he had been killed instead of Z-L-. The Petitioner underwent a psychological evaluation, in which he was diagnosed with PTSD, Major Depression, and a Generalized Anxiety Disorder. The Petitioner submitted psychotherapy progress notes from 2015 to 2020 detailing the ongoing emotional trauma he has experienced from witnessing Z-L-’s attack and subsequent murder, heightened in light of his understanding that he was the intended victim. At his last visit in July 2020, the Petitioner’s psychologist noted that the Petitioner was still suffering from headaches, insomnia, and nightmares and “often ha[d] the flashback of the trauma whenever he sees or hears anything related to death.” She again recommended ongoing treatment and social support for the Petitioner to help him recover from his trauma and resume a normal life.

Viewed in the totality, the evidence of the Petitioner’s involvement with and proximity to Z-L-’s murder, the violent nature of the crime, and the unusually direct injury he suffered as a result of it indicate that his experience of the murder 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 overcome the Director’s sole ground for denying his U petition. Therefore, we will remand the matter to the Director for consideration of whether the Petitioner has met the remaining eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse to the Petitioner, shall be certified to us for review.