



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

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

In Re: 20915791

Date: MAR. 28, 2022

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), concluding that the Petitioner did not establish that she was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits evidence previously in the record, new evidence, and a brief arguing that she has established eligibility for U-1 nonimmigrant classification. 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 establish eligibility for U-1 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. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a 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).

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). “Qualifying criminal activity” is “that involving one or more of” the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or “any similar activity in violation of Federal, State, or local criminal law.” Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9).

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 that the petitioner possesses information concerning the qualifying criminal activity and has been, is being, or is likely

to be helpful in the investigation or prosecution of it.<sup>1</sup> Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). 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 all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

The record shows that O-M-<sup>2</sup> the Petitioner's life partner and the father of her three daughters was shot multiple times in the chest by a perpetrator just outside the door to their apartment at a time when the entire family was home. O-M- was able to stagger inside the apartment where the Petitioner and her daughters tried to calm and assist him while he was grabbing his chest and saying he was dying. Most unfortunately, despite efforts made by the Petitioner, her daughters, and emergency medical services (EMS) to stem the bleeding with treatment and other methods, O-M- did not survive the shooting and died. The Petitioner assisted law enforcement in the investigation of the crime of murder and filed the instant U petition on that basis in May 2016.

### 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 she was not married to O-M- at the time of his murder, and therefore cannot be considered a qualifying relative for immigration benefit purposes. The Director further determined that the evidence submitted did not demonstrate that the Petitioner suffered direct or proximate harm as a result of the commission of qualifying criminal activity. On appeal, the Petitioner argues, through counsel, 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 the murder of her life partner, in the presence of her daughters, as they all watched him die from

---

<sup>1</sup> The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

<sup>2</sup> Initials are used to protect the identities of individuals.

multiple gunshot wounds while trying to save him prior to EMS arrival. The Petitioner further states that her proximity to her life partner's murder, and the mental and psychological long-term harm this tragic incident has placed upon her, demonstrates that she suffered direct and proximate harm and should be considered a victim of the violent act of his murder under 8 C.F.R. § 214.14(a)(14).

As relevant to the Petitioner's assertions on appeal, in the preamble to the U Nonimmigrant Status 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).

#### 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." The Mandatory Victim Restitution Act of 1996 (MVRA) and the Crime Victim's Rights Act of 2004 (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 Attorney General Guidelines for Victim and Witness Assistance (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).<sup>3</sup> On appeal, the Petitioner argues that 8 C.F.R. § 214.14(a)(14) "necessarily applies to another proximate individual . . . who either witnessed a murder or the aftermath of a murder, or was also harmed physically or mentally by the effects and close proximity to that murder."

In the context of the administration of, and purpose behind, the U nonimmigrant status regulations, 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

---

<sup>3</sup> 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.

activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent.”). USCIS referenced the Mandatory Victim Restitution Act of 1996 (MVRA), Crime Victim’s Rights Act of 2004 (CVRA), and 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). 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. 106-386, 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. 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 Life Partner’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 life partner’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 O-M- as the mother of their biological daughters, who also lived in the same home and were all in close proximity to his murder at the time it occurred. Indeed, the evidence demonstrates that the Petitioner and her daughters were at home at the time O-M- was shot with a gun multiple times just outside their home and they both witnessed and suffered the resultant shock and trauma of watching him fight for—and ultimately lose—his life due to the gunshot wounds.

Moreover, the Petitioner has established that her life partner’s murder was particularly violent. The Supplement B submitted with the Petitioner’s U petition indicated the crime of murder and stated that “[O-M-] was standing outside his residence. An unknown type vehicle drove up next to him, one suspect exited the vehicle and immediately started shooting at the victim. Victim suffered multiple fatal gunshot wounds.”

The Petitioner also submitted evidence of the severe emotional and psychological injury she suffered as a consequence of her life partner’s murder. In her personal statements in the record before the Director, the Petitioner emphasized that she and O-M- were at home with their daughters at the time of the incident. She explained that she and O-M- were relaxing on the front stoop while their daughters were inside, and when she went inside to get a sweater she and their daughters all heard gunshots. The Petitioner sent her daughters to their room, after which she turned around and saw O-M- “closing the door screaming ‘They shot me and they already killed me’” and she did not know what to do so she just embraced him. When she saw the condition O-M- was in she yelled out the window for help from the neighbors, telling them that her husband had been shot and was wounded and they needed help. The Petitioner recounted that after trying to get help from the neighbors she returned to O-M- and saw he was dying and that he “stood up jumping and shouting I cannot breathe. He dropped to the floor and began to tremble and to turn his eyes. His mouth trembled, my daughters were crying and hugging him . . . .” The Petitioner stated further that O-M- kept calling her name as he was taken in a stretcher down the alleyway to the EMS ambulance, but police told her that she could not travel in the ambulance with O-M- to the hospital. She was informed later by the police that O-M- had not survived the shooting, and recounted:

I hugged my daughters and told them that their dad had gone to heaven. They cried so much along with me that we did not want anyone to get near us. As soon as the pathway [*sic*], the neighbors took me to the hospital . . . [w]hen I got there they did not let me see him because they had taken him to the floor where they kept all the deceased. I did not see my husband until they took him to the funeral parlor. I had to hold my tears and my pain to start the process so that they go take [*sic*] his body to Mexico. People that work for victims of crime arrive [*sic*] to my apartment and they are assisting us. My daughters are too little to understand this tragedy that we experienced. They ask me: ‘why did they kill my dad, mommy’ and they cry a lot. They and I are receiving therapies to be able to overcome each stage of our lives. I continue to wait on the results of the investigation of the death of my husband. I hope to receive a phone call from the detectives and hear that they captured those murderers because those people cannot be out on the street killing the rest. My daughters only have me and I am fighting to succeed forward . . . .

A psychiatric evaluation and other mental health documents in the record before the Director diagnosed the Petitioner and her three daughters with post-traumatic stress disorder (PTSD) as a result of O-M-’s murder. Although the submission of such documentation was acknowledged by the Director in the decision, it is not readily apparent that a full analysis of the documentation was conducted. Our review of the mental health documents shows that the Petitioner and her three daughters underwent long-term counseling following O-M-’s murder. Specifically, the counseling involved a total of twenty-nine sessions, each approximately 45-60 minutes in length from July 2015 through March 2016. The summary report of these psychotherapy sessions stated that the Petitioner and her daughters appeared to be struggling with adjusting to the changes since O-M-’s death such as moving to another residence and city, and the Petitioner working full-time while also playing the role of both mother and father to her daughters. The summary report further indicated that the Petitioner was adversely impacted by the manner in which she saw O-M- die. Additionally, it was recommended that the Petitioner would benefit from additional individual sessions to assist her in managing the symptoms of PTSD and with adjusting to life after the death of O-M-.

Viewed in the totality, the evidence of the Petitioner’s proximity to her life partner’s murder, the violent and unexplained nature of the crime, and the unusually direct injury she suffered as a result of both her and her young daughters being present just after the shooting is 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 life partner’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 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.