U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21500506

Date: MAY 3, 2022

Appeal of Nebraska 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), as a victim of qualifying criminal activity. The Director of the Nebraska Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish he was a victim of qualifying criminal activity.[1] The denial of the Petitioner's U petition is now before us on appeal. We review 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; 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. 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 perpetrated against them. 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).

[1] The Petitioner filed a separate U petition in 2013 that was denied because he did not demonstrate that he was the victim of qualifying criminal activity.

II. ANALYSIS

The record reflects that the Petitioner's spouse (G-S-)[2] was kidnapped at gunpoint in 1999, taken across state lines, and sexually assaulted by one of the Petitioner's coworkers. When the Petitioner's spouse did not return to their home when expected, he suspected something was wrong and he contacted the local police department to inform them that she was missing and that the perpetrator was likely involved. He also proceeded to the perpetrator's residence but did not locate him or G-S-. Afterwards, the police met the Petitioner at his residence where he allowed them to search the apartment for clues and he showed them some of the materials from the perpetrator. Some of those materials were the perpetrator's bank statements that the Petitioner claims assisted the police in tracking him. Subsequently, the Petitioner received a voicemail from G-S- informing him of her location and that the kidnapping had occurred.

After the kidnapping incident, the Petitioner assisted law enforcement in the investigation and prosecution of the offense, and he provided evidence to the police and both he and his wife testified as key witnesses in the trial against the perpetrator. The Petitioner filed this U petition in May 2016 with a Supplement B certifying the crime investigated or prosecuted as felonious assault, kidnapping, and sexual assault. The Director denied the U petition, determining that the Petitioner was not an indirect victim of qualifying criminal activity as contemplated by 8 C.F.R. § 214.14(a)(14)(i), because he did not establish that his spouse was incapacitated or incompetent, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. The Director further concluded that the Petitioner did not demonstrate his eligibility for U nonimmigrant status under 8 C.F.R. § 214.14(a)(14) as a direct victim because he did not suffer direct and proximate harm as a bystander to the qualifying criminal activity perpetrated on his spouse. This appeal followed.

A. Victim of Qualifying Criminal Activity

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—felonious assault, kidnapping, and sexual assault—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).

[2] We use initials to protect the privacy of individuals.

As we explain below, the Petitioner has not established by a preponderance of the evidence that he is a victim, indirect or otherwise, of qualifying criminal activity such that he is eligible for U nonimmigrant status.

1. The Petitioner Is Not an Indirect Victim of Qualifying Criminal Activity Under 8 C.F.R. § 214.14(a)(14)(i)

On appeal, the Petitioner notes his spouse was incompetent or incapacitated during the qualifying criminal activity (i.e., when she was kidnapped and sexually assaulted), and he assisted law enforcement in the investigation and prosecution of the crime. As such, the Petitioner asserts that he qualifies as an indirect victim under the regulations. In support, the Petitioner contends that his spouse meets the definition of "incapacitated victim" as laid out in the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines).[3] Although we acknowledge this argument, we note that the AG Guidelines are not binding in these proceedings because USCIS referenced the AG Guidelines, as well as the Mandatory Victim Restitution Act of 1996 (MVRA) and the Crime Victim's Rights Act of 2004 (CVRA), solely as "informative resource[s] in the development of th[e] definition of victim" at 8 C.F.R. § 214.14(a)(14). New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status (U interim rule), 72 Fed. Reg. 53,014, 53,016 (Sept. 17, 2007).

Instead, to qualify as an indirect victim under the regulations, petitioners must establish that the direct victim was "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). Similarly, in the context of possessing credible and reliable information and assisting law enforcement in the investigation or prosecution of the criminal activity, if the direct victim "is incapacitated or incompetent[,]" and unable to assist law enforcement, a specifically designated representative may serve as a proxy on their behalf to provide the required assistance in the investigation and prosecution of the offense. 8 C.F.R. § 214.14(b)(2), (3).

In this case, the Petitioner's spouse was the direct victim of the qualifying criminal activity. Although she may have been momentarily incapacitated while the criminal activity took place, a preponderance of the evidence establishes that she was not incapacitated or incompetent and therefore unable to assist or be helpful to law enforcement during the investigation and prosecution of the crime. In this regard, the evidence indicates that the Petitioner's spouse informed a hotel employee that she was kidnapped and the perpetrator was armed, she completed an eight-page handwritten statement for the police as well as an oral and a taped interview, she testified as a key witness during the offender's criminal court proceedings, and she attended his parole hearings in opposition to the perpetrator's early release. Accordingly, the Petitioner has not established that he is an indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i).

[3] The AG Guidelines define an "incapacitated victim" as "any victim who is unable to interact with [law enforcement] personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearances."

2. The Meaning of "Direct and Proximate Harm" in the Regulatory Definition of Victim

The Petitioner next contends that he has established his eligibility for U nonimmigrant status as a direct victim because he suffered direct and proximate harm as a bystander to the qualifying criminal activity perpetrated on his spouse. 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" to "generally mean[] 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 argues that he meets the definition of direct and proximate harm as laid out in the AG Guidelines, noting that they ground the "direct and proximate" language in the "but for" principle of causation, whereby an individual is considered a "victim" of an offense if "the alleged harm [was] a . . . 'but-for' consequence" of the charged offense. AG Guidelines at 8–9 (rev. May 2012).[4]

Although we acknowledge this argument, it is ultimately not effective. Unlike the broad formulation that may apply in the context of crime victim restitution and victim assistance, 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) (noting 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 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"); U interim rule, 72 Fed. Reg. at 53,017 (providing that "[f]amily 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, 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 AG Guidelines, MVRA, and CVRA 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." U interim rule, 72 Fed. Reg. at 53,016. The MVRA, CVRA, and AG

[4] 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.

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.[5] 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" 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); U interim rule, 72 Fed. Reg. at 53,016 (providing that "USCIS does not anticipate approving a significant number of [petitions] from bystanders" and "[t]he AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims"). *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"). 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." U interim rule, 72 Fed. Reg. at 53,017. Consequently, USCIS further 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 we discuss below, the Petitioner has not demonstrated that he qualifies 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).

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

[5] We additionally note that, to date, the U nonimmigrant status program is vastly oversubscribed, with pending U-1 petitions reaching 171,303—a number over 17 times the annual statutory cap—and a total pending case load of 286,504 petitions. *Number of Form I-918, Petition for U Nonimmigrant Status*, U.S. Citizenship and Immigration Services (Apr. 26, 2022), https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2022_qtr1.pdf.

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. Within the interim rule, we indicated:

> 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.

U interim rule, 72 Fed. Reg. at 53,016.

3. The Petitioner Is Not a Victim of Qualifying Criminal Activity Under 8 C.F.R. § 214.14(a)(14)

Considering the foregoing, we look to the evidence in the record to determine if the Petitioner has established by a preponderance of the evidence that he warrants a favorable exercise of our discretion to consider him a victim of qualifying criminal activity as a bystander to a violent crime who contemporaneously suffered an unusually direct injury. The evidence in the record reflects that the Petitioner's spouse was kidnapped and sexually assaulted, and that during this violent incident, the Petitioner was not with his spouse. When she did not return home when expected, the Petitioner became worried and contacted the police. In his personal statements, he claims that since the crime occurred, he has experienced direct and proximate harm through his wife's victimization, including continued psychological and physical maladies. In support, the Petitioner submitted psychological evaluations finding that his complaints were consistent with symptoms associated with Posttraumatic Stress Disorder, General Anxiety Disorder, and Major Depressive Disorder. His reported physical issues are a cerebral aneurism, high blood pressure, high cholesterol, sleep apnea, arthritis in his knees, and chronic lower back pain. The Petitioner states on appeal, and he has reported to doctors, that he did not experience any of these issues prior to his spouse's incident in 1999.

Upon *de novo* review, the Petitioner has not established, by a preponderance of the evidence, that he suffered direct and proximate harm as a result of the commission of qualifying criminal activity that was not perpetrated against him. We acknowledge and consider that a particularly violent crime occurred. We also do not seek to diminish the harm the Petitioner and his family have suffered as a result of the crime. However, in the end, the Petitioner has not established that he warrants a favorable exercise of our discretion to determine that he suffered direct and proximate harm under 8 C.F.R. § 214.14(a)(14). As stated, if a qualifying crime was not directly committed against an individual, bystander classification would generally include only those present during the commission of particularly violent qualifying criminal activity who concurrently suffered an unusually direct injury as a result of the crime. The qualifying criminal activity was not committed directly against the Petitioner, he was not present during the crime, he did not personally witness the criminal activity as it occurred, and the evidence in the record does not describe the Petitioner suffering any specific concurrent injury, unusually direct or otherwise, as a result of the crimes committed against G-S-. Therefore, the Petitioner has not established by a preponderance of the evidence that he 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).

B. The Remaining Eligibility Criteria for U-1 Classification

The U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that a petitioner is a victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)–(IV) of the Act. As the Petitioner has not established that they were the victim of qualifying criminal activity, they necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that they were 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.