



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

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

In Re: 22567917

Date: NOV. 08, 2022

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U nonimmigrant classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity. The Director subsequently denied a motion to reconsider after determining that the Petitioner failed to meet the regulatory requirements for the motion. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

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 of which they are the victims. Section 101(a)(15)(U)(i) of the Act. “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). The regulation at 8 C.F.R. § 214.14(a)(14) defines a “victim of qualifying criminal activity” as an individual who has suffered direct and proximate harm as a result of the crime. 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 (hereafter referred to as an “indirect victim”) 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).

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 the petitioners’ 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). Petitioners must also provide a statement describing the facts of their victimization as well as any additional evidence they want U.S.

Citizenship and Immigration Services (USCIS) to consider to establish that they are victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

Petitioners bear the burden of proof of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(2); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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

A. Relevant Facts and Procedural History

The Petitioner filed her Form I-918 in May 2016 with supporting documentation that included, in part, a police report, a declaration (2016 declaration), and a psychological evaluation (2016 evaluation). The police report establishes that the Petitioner witnessed an argument between her son and his girlfriend in [REDACTED] 2008, at which time her son was 17 years old and had been living with his girlfriend for two months. The police report includes detailed information about the incident that was provided by the Petitioner's son and reflects that the Petitioner provided information to the police as well.

In her 2016 declaration, the Petitioner states that the [REDACTED] 2008 incident was not the first time her son was abused by his girlfriend, and she describes incidents where her son's girlfriend threw his clothes out of a window, and that he had been hit and bitten prior to the incident as well. She states that the abuse her son suffered took a toll on her emotional well-being, causing her to be unhappy and easily stressed. After witnessing the incident, the Petitioner states that she felt like a failure for not protecting her son, that she was irritable and angry, and that she developed insomnia. As a result, the Petitioner stated that she no longer wanted to do anything but be at home and that her family would get upset because she was tired and had no desire to leave the house. The Petitioner underwent counseling but stated that she still struggled with depression as a result of witnessing the incident.

The psychological evaluation, conducted in January 2016, states that the 2008 incident was very traumatic for the Petitioner and caused her to fear that her son and his girlfriend would hurt each other, but also that police would take her son away due to his immigration status. The evaluation also indicates that besides being affected by the incident, she feared deportation because of violence in Mexico. The evaluation diagnoses the Petitioner with Acute Stress Disorder and recommends that she receive treatment for one year.

The Director issued a request for evidence, wherein he advised that the Petitioner did not appear to meet the definition of an indirect victim because her son was not incompetent or incapacitated but added that she may still otherwise meet the definition of a victim if she could establish that she suffered direct and proximate harm and that the harm suffered constituted substantial physical or mental abuse. In response, the Petitioner submitted an updated declaration (August 2021 declaration) wherein she stated that at the time of the incident, her son and his girlfriend lived in their own apartment but that their apartments were in the same building. She disclosed that her son's relationship with his girlfriend

was already affecting her before the [] 2008 incident as she worried about her son's safety and her family's risk of being reported to immigration authorities, but that the [] 2008 incident worsened the affects, prompting her to receive counseling for approximately six months. She added that her son and his girlfriend reconciled after the incident, dated for several years, and had a child together in 2012, but they eventually separated. She explained that the circumstances surrounding her son's relationship with his girlfriend calmed down in 2015 as her son was "more of an adult and could look out for himself," and as a result she felt less fearful. The Petitioner stated that she provided care for her son's child after the child was born. Despite the passage of thirteen years, however, she stated that she still feels the effects of the incident, including difficulty concentrating, undergoing therapy with her husband, and being more nervous and anxious than she was before the incident.

The Director denied the Petitioner's Form I-918, concluding that the Petitioner's son was the direct victim, not the Petitioner, and that the Petitioner did not establish that she was an indirect victim. The Director further found that the Petitioner did not establish she was directly or proximately harmed by the commission of the qualifying criminal activity. In finding the Petitioner was not an indirect victim, the Director stated that the police report shows her son spoke directly with law enforcement officers and gave a complete report regarding the events that transpired and thus was not incompetent or incapacitated, nor unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. In determining that the Petitioner did not establish she was directly or proximately harmed, the Director stated that the direct and proximate harm was the injuries that her son may have sustained due to the assault and not her psychological injuries.

The Petitioner filed a motion to reconsider that included another updated declaration (December 2021 declaration) wherein she provided additional details regarding the [] 2008 incident. In this declaration she claimed her son's girlfriend pushed her during the incident, and that while her son spoke with police, he only provided minimal information as he was upset, overwhelmed, scared, and embarrassed. She claimed that she provided approximately 80% of the information to the police while her son only provided approximately 20%. She also reemphasized that the effects of the crime started months before the [] 2008 incident due to problems her son was having in his relationship with his girlfriend, but that she is still more anxious and nervous than before the incident.

The Petitioner's motion also included an updated psychological evaluation (2021 evaluation) that indicated the Petitioner participated in seven therapy sessions starting in July 2021. The evaluation stated the Petitioner still suffered from nightmares and the feeling that someone is following her on the street, and that while her concentration had improved, she still had days where she did not function at 100%. The evaluation concluded that the Petitioner's greatest preoccupation concerns one of her children who has a heart condition and whether he could get adequate treatment in Mexico should she have to return to that country.

The Director dismissed the motion finding that the motion did not provide precedent decisions to consider and did not establish that the decision was incorrect based on the evidence in the record at the time it was made.

On appeal the Petitioner claims she qualifies as a victim due to the incompetence or incapacitation of her son, because while her son spoke with police, he was unable to fully cooperate due to his young age and mindset, and that her cooperation was essential for the arrest of her son's girlfriend. The

Petitioner additionally contends she did in fact suffer direct and proximate harm as a result of the crime, as she was pushed by her son's girlfriend and suffered serious psychological effects as a direct result of the crime including a diagnosis of acute stress disorder, anxiety and nervousness, and difficulties in her marriage.

B. The Petitioner Has Not Shown She is a Qualifying Victim

A "victim of qualifying criminal activity" is defined as a person who is directly or proximately harmed by the commission of qualifying criminal activity. 8 C.F.R. § 214.14(a)(14). Parents 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 for purposes of a U petition under section 101(a)(15)(U)(i) of the Act if the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, such that he or she 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).¹

The record establishes that the Petitioner's son was the victim of criminal activity and that he was under 21 years of age at the time the activity occurred. The Petitioner's son is not deceased due to murder or manslaughter, and thus the Petitioner may be considered a victim if her son was either incompetent or incapacitated at the time of the incident such that he was unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. The record, however, does not establish this. The police report for the incident reflects that the Petitioner's son provided information to the police that constitutes a significant portion of the report. The information he provided includes specific details of the nature of his relationship with his girlfriend and the actions taken by both parties during the [REDACTED] 2008 incident, including how his girlfriend tried to throw his clothes out of a window, that she called 911, started kicking him, and then slapped him in the face. By comparison, the August and December 2021 declarations reflect that the Petitioner was not present when the [REDACTED] 2008 incident immediately began, and that instead she only arrived after she was notified by a neighbor that her son was having an argument. The police report also indicates that the Petitioner at some point left the room where the incident occurred which limited the amount of information she could provide to the police. As such, while the Petitioner states that her son was too scared and embarrassed to give detailed information to the police, and that she spoke to the police 80% of the time, review of the police report does not support these assertions. The Petitioner has not established by a preponderance of the evidence that her son was incompetent or incapacitated and thus *unable* to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. Thus, the record does not establish that the Petitioner was an indirect victim at the time of the qualifying criminal activity.

Furthermore, the record does not establish that the Petitioner was directly or proximately harmed during the [REDACTED] 2008 incident. 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

¹ Generally, for purposes of 8 C.F.R. § 214.14(a)(14)(i), U.S. Citizenship and Immigration Services (USCIS) presumes incapacity or incompetency if the direct victim is under 16 years old. Because the direct victim in this case was 17 years old at the time of the criminal activity, the presumption does not apply.

regulations define the term “direct and proximate harm.” 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) (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).

The U nonimmigrant 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 criminal activity is “deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity”); New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,017 (“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.”).

However, “direct and proximate harm” will generally encompass only those individuals against whom qualifying criminal activity is directly committed. 8 C.F.R. § 214.14(a)(14); New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,016 (“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.”). Any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed is applied in limited, dire circumstances, 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* New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,016 (“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.”).

Considering the foregoing, we look to the evidence in the record to determine if the Petitioner has established that she warrants a favorable exercise of our discretion to consider her a victim of qualifying criminal activity as a bystander to a particularly violent crime who concurrently suffered an unusually direct injury. The Petitioner argues she has suffered direct and proximate harm in part due to having witnessed the crime against her son with whom she had a close relationship, and from being pushed during the 2008 incident. The Petitioner claims that she suffers from multiple psychological effects that would not exist if not for the crime in 2008. This argument is not supported by the record, however, because the psychological evaluations submitted by the Petitioner, as well as her own declarations, reveal that there are several sources impacting her mental health that predate or arose after the incident in 2008, including general concerns about her son’s safety and her ability to protect him, the threat of deportation, and the current health of another family member. While we do not diminish the fear and anxiety the Petitioner may have experienced before, during, and after the incident she witnessed, the record does not reflect that she concurrently suffered an unusually direct

injury as a result of witnessing the incident between her son and his girlfriend as certified on the Supplement B. Therefore, the Petitioner has not established by a preponderance of the evidence that she was the victim of qualifying criminal activity.

C. The Remaining Eligibility Criteria for U Nonimmigrant Classification

U nonimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that she was the victim of qualifying criminal activity, she necessarily cannot satisfy the remaining criteria at section 101(a)(15)(U)(i) of the Act.

III. CONCLUSION

While we acknowledge the impact of 2008 incident upon the Petitioner, the record does not establish that the Petitioner was the victim of qualifying criminal activity. Accordingly, the Petitioner is not eligible for U nonimmigrant status.

ORDER: The appeal is dismissed.