



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

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

In Re: 24461925

Date: JAN. 23, 2023

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). The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), finding the Petitioner was not the victim of qualifying criminal activity. The Director concluded that the Petitioner therefore could not possess information regarding qualifying criminal activity, be helpful to law enforcement, or have suffered substantial physical or mental abuse. The Director further found that the Petitioner was not physically present during the commission of the criminal act and therefore could not have provided information or been helpful even if the crime qualified. Finally, the Director determined that the Petitioner did not qualify as an indirect victim because she had not shown that the direct victims were incapacitated or incompetent. The Director concurrently denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) due to the denial of the underlying U Petition. The Petitioner filed a combined motion to reopen and reconsider with the Director which was also denied. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 credible and reliable 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 parent of a direct victim under 21 years of age is also considered a victim “where the direct victim...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 regulations define credible and reliable information as “specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution.” 8 C.F.R. § 214.14(b)(2). A parent may possess such information on behalf of a minor child who has not yet reached 16 years of age. *Id.*

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 petitioner’s credible and reliable information regarding, and 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 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. 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, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Procedural and Factual History

In 2002, two armed men entered the Petitioner’s home when her three children were present. The children were aged 17, 13, and 10 years on the date of the incident. The assailants pointed firearms at the children, instructed the children to lay flat on the floor and not look at them, and stole property from the home and from the Petitioner’s vehicle. At one point, the Petitioner’s eldest son had a firearm placed directly against his head and his head was pushed to the floor. The [REDACTED] Police Department investigated the crime and prepared a police report the same day (PD report). In the PD report, the Petitioner is listed as a victim of the crime; the report notes that she cannot identify the suspects but that she is willing to testify. The Petitioner is listed as the owner of the victimized vehicle and of five of the seven stolen items.

The Petitioner filed the U petition in 2016 as an indirect victim of the crime. Her U petition contained a Supplement B signed and certified by a lieutenant with the [REDACTED] Police Department in 2015 (2015 Supplement B). The 2015 Supplement B indicates the Petitioner was the victim of “Other: Home Invasion” and specifies that the criminal activity investigated was “Aggravated Robbery ARS 13-1903; Armed Robbery ARS 13-1904.” The 2015 Supplement B indicates the Petitioner suffered severe mental and emotional harm, lists the property taken from her, and affirms that she possesses information regarding the criminal activity and confirms her helpfulness to law enforcement.

The Director issued a request for evidence (RFE), directing the Petitioner to provide evidence to demonstrate that the crime qualified as one of the crimes listed in the U visa regulations or was

substantially similar to those crimes. The Director also noted that the Petitioner was not present when the crime occurred, and that her U petition had not established that had been or would be helpful to law enforcement or that she possessed information about the criminal activity. The RFE directed the Petitioner to submit a statement from a certifying official to show that she was helpful in the investigation or prosecution and that she possessed information regarding the crime. The Director also requested additional information regarding substantial physical or mental abuse suffered as a result of having been a victim of qualifying criminal activity, again noting that she was not physically present during the commission of the offense. In response, the Petitioner submitted a brief, a personal statement, a psychological evaluation, birth certificates for her children, and declarations from her children.

After considering the evidence in the record, the Director denied the U petition. The Director determined the Petitioner had not established that she was the victim of a qualifying crime. The Director indicated that her sons were the victims of aggravated assault and armed robbery. The Director found that home invasion was not a qualifying criminal act and was not substantially similar to one of the listed qualifying offenses. The Director also concluded that the Petitioner could not be the victim of armed robbery or aggravated robbery as listed in the 2015 Supplement B because she was at work when the criminal activity occurred. The Director determined the Petitioner was unable to show substantial physical or mental abuse because the home invasion while she was working was not qualifying criminal activity. Furthermore, she could not show she possessed information regarding qualifying criminal activity or that she was helpful to the investigation or prosecution; in reaching these conclusions the Director again noted that the home invasion was not a qualifying crime and also indicated that the Petitioner could not identify the suspects. Finally, the Director found the Petitioner to not be an indirect victim, concluding that “the record does not establish your sons’ incapacity or incompetency To the contrary, the police narrative indicates your sons cooperated with the police.” Because the Director did not find evidence of incapacity or incompetence, they determined the Petitioner could not qualify based on her familial relationship to her sons.

The Petitioner filed a combined motion to reopen and reconsider the Director’s decision. In support, the Petitioner filed an additional psychological report, a medical note, and a supplemental affidavit. The Director denied the motions and affirmed the prior decision, indicating that she had not provided new evidence or case law for consideration and had not established that the decision was incorrect.

On appeal, the Petitioner submits a legal brief and a new Supplement B certified by a lieutenant with [REDACTED] PD in 2022 (2022 Supplement B).¹ The 2022 Supplement B certifies that the qualifying crime of felonious assault was committed and cites to armed robbery. Ariz. Rev. Stat. Ann. § 13-1904. In her brief, the Petitioner argues that she was the victim of qualifying criminal activity. She contends that the listed robbery offenses are substantially similar to the qualifying offense of felonious assault. She argues that the Director erred in requiring her to show physical presence at the scene in order to establish her victimhood and the decision erroneously listed requirements for a bystander victim, rather than an indirect victim. Regarding her status as an indirect victim, the Petitioner concedes that her oldest son was 17 years old at the time of the crime and was not incapacitated or incompetent. However, her two younger sons should be presumed incompetent due to their young

¹ After review of the record, it appears that, despite an earlier attempted filing by the Petitioner’s counsel, the 2022 Supplement B was never submitted to the Director.

age, and the evidence does not rebut this presumption. She argues that she possesses credible and reliable information about the crime and there is no requirement that an indirect victim be able to identify the perpetrator to satisfy the requirement of possessing information. Finally, she contends that she has demonstrated her helpfulness to law enforcement as certified on two separate Supplements B.

B. The Impact of the 2022 Supplement B is Properly Determined by the Director

As noted above, the Petitioner has filed the 2022 Supplement B for initial consideration on appeal. This form includes, for the first time, a certification from law enforcement that the Petitioner was the victim of felonious assault or a substantially similar offense. The Director's decision determined that the Petitioner had not established the incident at her home constituted a qualifying criminal offense, basing the analysis on the 2015 Supplement B's certified category of "Other: home invasion." While the Director determined her sons were the victims of aggravated assault and armed robbery, the decision only analyzed the Petitioner's case under the rubric of armed or aggravated robbery in the context of a home invasion. The Director ultimately found that no qualifying criminal activity had been investigated, prosecuted or detected. The 2022 Supplement B provides new information with respect to qualifying criminal activity that is properly reviewed by the Director in the first instance. We will remand for the Director to determine whether the Petitioner was the victim of the qualifying crime of felonious assault.

C. The Petitioner Has Demonstrated that She Possesses Credible and Reliable Information Regarding the Underlying Criminal Activity and was Helpful in the Investigation, Detection, or Prosecution of the Crime

While generally finding the Petitioner did not meet the U petition eligibility requirements due to the failure to show qualifying criminal activity, the Director also made findings based on the Petitioner's lack of physical presence during the crime. The Director concluded that the Petitioner did not meet her burden of establishing that she possessed credible and reliable information about the criminal activity and was helpful to law enforcement because she did not witness the crime occur. Contrary to the Director's determination, not witnessing the crime does not preclude the Petitioner from establishing that she was helpful to authorities investigating or prosecuting the crime or had knowledge of the crime. *See* section 101(a)(15)(U)(i)(III) of the Act.

The regulations governing U Petitions do not specify that a U petitioner must have direct or first-hand knowledge of the criminal activity being investigated. Rather, the regulations only require that the information be "credible and reliable" and that the individual have knowledge of specific facts and details of the criminal activity. 8 C.F.R. § 214.14(b)(2). Here, the evidence on record demonstrates that the Petitioner did possess credible and reliable information regarding the incident.

On both the 2015 and 2022 Supplements B, the certifying official certified the Petitioner as having information regarding the underlying criminal activity. This certification is supported by the PD report, which lists the Petitioner as a victim and details property belonging to the Petitioner that was taken during the incident. This property includes jewelry as well as personal documents. The Petitioner further indicated in her affidavit that she arrived home in the immediate aftermath of the incident and personally observed the state of her home, including ransacked rooms and dishes on the

floor. She described the financial impact of the robbery and listed the exact documents that were taken from her purse. She also noted conversations she had with her children where she was able to obtain specific details regarding the incident. This record evidence is sufficient to establish her knowledge of specific facts regarding the crime.

Upon review, the Petitioner has also shown that she was helpful in the investigation or prosecution of the crime. Although the Petitioner was not present during the crime, the certifying official indicated in both Supplements B that the Petitioner was helpful to the investigation or prosecution of the qualifying crime. She is listed as a victim on the PD report, where the investigating officers noted her willingness to testify. There is no indication on record that she ever unreasonably refused to cooperate or provide assistance.

Considering this evidence, the Petitioner has established that she possessed credible and reliable information and specific facts concerning the criminal activity as contemplated by section 101(a)(15)(U)(i)(II) of the Act. The Petitioner has also established that she been helpful to the certifying agency in the investigation, detection, or prosecution of criminal activity, as required by the Act and regulations. See section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3). Should the Director determine on remand that the Petitioner was a victim of qualifying criminal activity, she should also be found to have satisfied these elements of U petition eligibility.

D. The Petitioner Is an Indirect Victim Due to Her Familial Relationship With the Direct Victims

The Director determined the Petitioner did not meet the definition of an indirect victim because she had not demonstrated that her sons were incapacitated or incompetent. Under 8 C.F.R. § 214.14(a)(14)(i), an indirect victim can provide information and be helpful on behalf of a direct victim who is unable to meet these requirements due to death, incapacity, or incompetency. In addition, incapacity is presumed due to a minor victim's age when the victim is under the age of 16. 8 C.F.R. § 214.14(b)(2), (3). Reading these two statutory sections together, an indirect victim satisfies the incapacity requirement and can provide information and be helpful where a minor victim is under 16 years old when the crime is committed. The Petitioner has established a presumption that her children are incapacitated and she qualifies as an indirect victim because two of her qualifying relatives, her two younger sons, were under the age of 16 when the criminal activity occurred. The youngest was only 10 years old, significantly below the presumptive threshold. The evidence on record does not rebut this presumption. The PD report indicates that the police initially obtained information from the Petitioner's eldest child; it does not otherwise indicate that her younger children were able to provide information or be helpful without her assistance. In her affidavits, the Petitioner described the mental state of her children immediately following the incident, indicating that they were tearful and the younger children were very frightened. Therefore, the Petitioner has established that she qualifies as an indirect victim of the criminal conduct.

III. CONCLUSION

On appeal, the Petitioner has submitted new evidence regarding qualifying criminal activity that is properly determined by the Director in the first instance. Should the Director determine that the Petitioner was the victim of qualifying criminal activity, the Petitioner has established her helpfulness

in the investigation and prosecution of qualifying criminal activity. She has also established that she possesses information about the crime sufficient to support a law enforcement certification. Finally, the Petitioner meets the definition of an indirect victim. We will remand the case to the Director for reconsideration of whether the Petitioner has shown she is the victim of qualifying criminal activity and for consideration of the remaining eligibility grounds of the U petition.

ORDER: The Director's decision 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.