



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

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

In Re: 25965865

Date: JUNE 6, 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 Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), and a subsequent motion to reconsider. The Director concluded that the Petitioner did not establish that he was a victim of the qualifying criminal activity perpetrated against his son and, consequently, also did not meet any of the other eligibility criteria. The matter is now before us on appeal. On appeal, the Petitioner submits previously submitted evidence and reasserts his eligibility for the benefit sought.

The Applicant 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

Section 101(a)(15)(U)(i) of the Act provides U-1 nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. These victims must also possess information regarding the qualifying crime and be helpful to law enforcement officials in their investigation or prosecution of the crime. Section 101(a)(15)(U)(i) of the Act.

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.¹ 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

¹ 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.

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. Background Information and Relevant Facts

The record indicates that the Petitioner's son, A-D-M-², and three other teenagers, B-B-, A-S-, and T-B- were waiting to get into a party. D-L-, a gang member, approached B-B- and A-S-, and asked where they were from. A-S- responded "from nowhere" and told D-L- that "he did not bang." D-L- then moved behind B-B-'s shoulder, "pull[ed] a gun out of his waistband with his right hand and fire[d] five shots toward [B-B-] and [A-S-]." D-L- fatally wounded B-B- and shot A-D-M- in the leg as he ran from the scene. A-D-M- was hospitalized for one week. During that time, several detectives questioned A-D-M- about the incident. He was scared to tell the detectives what happened because D-L- was a known gang member, but the Petitioner encouraged him to cooperate and "do the right thing." The Petitioner submitted a statement, in which he confirmed that he provided support and encouragement to A-D-M- during and after his hospitalization. The record further indicates that D-L- was later arrested and convicted of first-degree murder and attempted extortion with various gang and firearm enhancements. He was sentenced to 50 years to life, consisting of 25 years to life for first degree murder, plus a consecutive 25 years for discharging a firearm causing death, and a concurrent 10 years for extortion. The Petitioner filed the instant U petition based on his son's gunshot injury in October 2016.

B. Victim of Qualifying Criminal Activity

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 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 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 they are 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).

The Director denied the U petition, concluding the Petitioner did not demonstrate that he was the indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), as the parent of a direct victim who was under 21 years of age at the time the criminal activity was committed and who was deceased due to murder or manslaughter, incompetent, or incapacitated.

On appeal, the Petitioner contends, among other things, that the Director failed to meaningfully consider the age of A-D-M-, the direct victim, in determining whether he was incompetent or incapacitated at the time of the crime. Upon de novo review, we withdraw the Director's decision below that the Petitioner did not establish his indirect victimization under 8 C.F.R. § 214.14(a)(14)(i).

² Initials are used to protect the individual's privacy.

The record indicates that the Petitioner's son was the direct victim of the qualifying criminal activities of felonious assault and attempted murder in January 2010. At the time of the criminal activity, the Petitioner's son was 15 years old. However, the Petitioner may only qualify as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i) if the record establishes that his son was incapacitated or incompetent.

Pursuant to 8 C.F.R. § 214.14(a)(14)(i), an indirect victim steps into the shoes of the direct victim (regardless of age) if the latter is unable to provide information regarding the criminal activity or be helpful to the investigation and prosecution of the activity, as required by subsections 101(a)(15)(U)(i)(II) and (III) of the Act, either due to death from murder or manslaughter, incapacity, or incompetency. The referenced statutory provisions, along with the corresponding regulations at 8 C.F.R. § 214.14(b)(2) and (3), presume a victim's incapacity where he or she is under 16 years of age, and in such instances, authorize a parent, guardian, or next friend of the victim to possess the requisite information regarding a qualifying crime and provide the required assistance to law enforcement on behalf of the victim.

A similar presumption is implicated when assessing the direct victim's incapacity or incompetency in the context of a family member's petition as an indirect victim under 8 C.F.R. § 214.14(a)(14)(i). 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. This presumption may be overcome if the evidence plainly indicates that despite the direct victim's age under 16, they were not incompetent or incapacitated. The direct victim's provision of some assistance in the investigation or prosecution does not necessarily preclude a determination that the direct victim was, ultimately, incompetent or incapacitated. Rather, USCIS may assess the direct victim's incompetency or incapacity considering factors such as the level of participation of the direct victim in the investigation or prosecution, the level of participation of the indirect victim, the indirect victim's role in supporting the direct victim, and whether the direct victim was granted U-1 status, when applicable. The fact that the totality of evidence in the record can overcome the general presumption that a direct victim is incompetent or incapacitated is not a burden-shifting scheme. The burden of proof remains with the petitioner to establish all eligibility requirements for U nonimmigrant status. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375.

Upon de novo review, the Petitioner has established, by a preponderance of the evidence, that he was the victim of qualifying crimes under section 101(a)(15)(U)(iii) of the Act, based on his son's gunshot injury. Although the Petitioner's son repeatedly spoke to detectives and identified D-L- through a photo lineup, the record evidence makes clear that he did so with the support and encouragement of the Petitioner. Furthermore, the record demonstrates that the Petitioner provided emotional support to his son after the incident and ensured that he was available to speak with law enforcement officials on multiple occasions. Finally, the record evidence indicates that the Petitioner's son was subpoenaed several times over the course of a year, and the Petitioner took him to court each time. Accordingly, the record as a whole does not rebut the presumption of the Petitioner's son's incapacity or incompetency. The Petitioner therefore is a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i), as the parent of a direct victim who was under 21 years of age and was incapacitated at the time the qualifying crime occurred.

III. CONCLUSION

The Petitioner has established that he is a victim of qualifying criminal activity. The Director did not otherwise determine whether the Petitioner satisfied the remaining eligibility criteria for U-1 nonimmigrant status. *See* section 101(a)(15)(U)(i)(I)-(IV) of the Act (outlining eligibility criteria for U-1 nonimmigrant status). Because the only ground for denial of the Petitioner's U petition has been overcome on appeal, the matter will be remanded for analysis of the remaining eligibility requirements and the issuance of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.