



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 25235541

Date: MAR. 13, 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), as a victim of qualifying criminal activity. The Director of the Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that she was a victim of the qualifying criminal activity. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that she has established eligibility for the benefit sought.

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 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; possesses 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 “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).

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. 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. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

The Petitioner contends that in [REDACTED] 2010, her boyfriend was the victim of an assault with a firearm, which occurred in front of her home. She filed the instant U petition in March 2017 with a Supplement B signed and certified by a sergeant in the [REDACTED] Arizona Police Department certifying the crime investigated or prosecuted as attempted murder/aggravated assault. The Supp B did not indicate that the Petitioner sustained any injuries during the incident. In support of her U petition, and in addition to the statements in her declaration describing the emotional impact of the criminal activity, the Petitioner submitted a 2020 psychological evaluation and a letter from a community health center. The psychological evaluation indicates that the Petitioner, who reported symptoms includes recurrent distressing thoughts of the shooting, exaggerated startled response, and nightmares, “appears to be presently suffering from posttraumatic stress disorder, general anxiety disorder, and major depressive disorder, mostly likely associated with and/or exacerbated by the past victimization she suffered.” The letter from the health center indicates that in August 2016, the Petitioner began treatment for depressive disorder and anxiety; however, the letter does not provide any further information on why the Petitioner sought treatment.

The Director denied the U petition, concluding the Petitioner did not demonstrate that she suffered direct and proximate harm to establish her victimization under 8 C.F.R. § 214.14(a)(14) because although she claimed to have suffered physical and mental harm as a consequence of the crime, her harm was too far removed from the crime itself to qualify as direct or proximate harm as required for U nonimmigrant eligibility.<sup>1</sup> In addition, the Director highlighted that the Petitioner’s personal statement was inconsistent with police records. Specifically, the Petitioner claimed to have witnessed the shooting of her boyfriend and stated that the suspect pointed a gun at her, threatening to shoot her. However, police records indicate that she was inside her house asleep and awakened by gunshots.

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

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). On appeal, the Petitioner asserts that she is a victim because she suffered direct and proximate harm as a bystander to the qualifying crime of attempted murder.

The preamble to the U Nonimmigrant Status Interim Rule (Interim Rule) provides that USCIS may, in limited circumstances, “exercise its discretion on a case-by-case basis to treat bystanders as victims

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<sup>1</sup> The Director also determined that the Petitioner did not establish by a preponderance of the evidence that she was an indirect victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14)(i) because she did not hold the requisite familial relationship to the victim. The Petitioner does not contest this determination on appeal.

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. 53,014, 53,016 (Sept. 17, 2007). When referencing a “bystander” in the preamble to the Interim Rule, USCIS explained that any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed would be 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 record to determine if the Petitioner has established by a preponderance of the evidence that she warrants a favorable exercise of our discretion to consider her a victim of qualifying criminal activity as a bystander to a violent crime who contemporaneously suffered an unusually direct injury.

In her declaration, the Petitioner stated the following:

I, [Petitioner], is writing this to let you know how I felt after seeing my boyfriend get shot in the back multiple times. When I witness this, it really had a bad impact in my life. It happened in front of my house then he turned around and pointed the weapon to my face and said he will shoot me next. It was the scariest thing in my life. For no reason he shot my boyfriend. I used to be friendly. This incident has a huge impact in my life. . . I have really bad trust issue . . . I’m always looking behind my back . . . my boyfriend was in the hospital for several weeks in very bad critical condition. The suspect that caused the damage ran away from the scene and was never arrested. I am very afraid that one day I will run into him and he might cause me damage or even kill me . . . Me and my kids were in my house and it got shot up several times . . . I have a lot of nightmares thinking he can come hurt me or my family.

As an initial matter, the Petitioner has not established that she witnessed the commission of the qualifying criminal activity as the record contains inconsistencies regarding the Petitioner’s exact location during the incident, the sequence of events preceding the incident, and the Petitioner’s relationship with the victim. Specifically, contrary to the Petitioner’s claim of being with the victim when he was shot and being threatened by the perpetrator, the police report states that the Petitioner “told [the officer] she was inside her house asleep when she was awoken by arguing and gunshots. [The Petitioner] went outside and saw [the victim] on the ground. [The Petitioner] only knows [the victim] from the bar she works at.” The Petitioner has also not established that she suffered direct and proximate harm because she has not shown that she concurrently suffered any injury as a result of the criminal activity. While we do not diminish the fear and anxiety the Petitioner may have experienced in the aftermath of the armed assault on her friend, the record does not reflect that she concurrently suffered an unusually direct injury as a result of the criminal activity. We acknowledge the Petitioner’s statements and the findings in the psychological evaluation; however, the psychological evaluation does not describe the Petitioner suffering any concurrent injury; instead it indicates that the incident

in 2008 mostly likely exacerbated preexisting mental health conditions resulting from past victimization.<sup>2</sup> In addition, during the psychological evaluation, the Petitioner provided another version of the incident which conflicted with her personal statement and police records.<sup>3</sup>

The Petitioner has not addressed the inconsistencies in the record or sought to clarify the differences between her accounts of the incident and police records. Further, the inconsistencies in the record prevent us from fully analyzing the impact of the incident on the Petitioner as it is unclear whether she was a witness to the armed assault or whether the victim was her boyfriend or an acquaintance. Viewed in the totality, the Petitioner has not met her burden of establishing that she warrants a favorable exercise of our discretion to determine that she suffered direct and proximate harm as a result of being a bystander to a qualifying criminal activity perpetrated, as 8 C.F.R. § 214.14(a)(4) requires.

#### B. The Remaining Eligibility Criteria for U-1 Nonimmigrant Classification

U-1 nonimmigrant classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that a petitioner was the victim of qualifying criminal activity. Section 101(a)(15)(U)(i)(I)-(IV) of the Act. Because the Petitioner has not established that she was a victim of qualifying criminal activity, she necessarily cannot establish the other eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act.

### III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she was 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.

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<sup>2</sup> Specifically, during her psychological evaluation, the Petitioner indicated that her former spouse and father of her first child was murdered in Mexico, the father of her second child was kidnapped and murdered in Mexico, and the father of her third child died from a drug overdose.

<sup>3</sup> The psychological evaluation indicates that the Petitioner claimed that “[h]er assailant attempted to kill her friend who drove her home after a night out. She said the man had made advances on her about a year earlier. She said her friend drove her home because she had been drinking. She said the man drove her car and when they arrived at her home both got out of the car. She said the assailant drove up and accused her of having a romantic relationship with the friend that drove her home. She said the assailant became upset and drove off but returned about 15 minutes later. She said the friend who drove her home was outside standing on the street waiting for a friend to pick him up. [The Petitioner] said the assailant starting shooting at the man. She said three of the bullets hit the man and three of the bullets came through her apartment. [The Petitioner] said she ran outside and saw her friend had on the ground with blood all around him.”