



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

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

In Re: 22954798

Date: DEC. 13, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The matter is now before us on appeal. On appeal, the Petitioner asserts her eligibility for U nonimmigrant status and submits additional evidence. We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for entry of a new decision.

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 it. *Id.*

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). “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 term “‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities” at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions, and petitioners bear 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)(1),(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). As a part of meeting this burden, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying their 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). Petitioners 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 victims of qualifying criminal activity and have otherwise satisfied the remaining eligibility criteria. 8 C.F.R. § 214.14(c)(2)(ii). Although petitioners may submit any evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all of the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner, a 56-year-old native and citizen of Mexico, claims to have last entered the United States without inspection around November 1995. The record shows that between approximately [] and [] 2011, the Petitioner's adult brother, F-,¹ was repeatedly raped by their sister-in-law's brother, O-. The Petitioner filed the instant U petition in November 2015, asserting that she was a victim of the qualifying criminal activity based on the sexual assault of her brother, who has Down syndrome and is developmentally disabled. She simultaneously filed the requisite Supplement B, signed by a lieutenant with the [] Police Department in [] Washington (certifying official) and certifying the crimes investigated or prosecuted as abusive sexual contact, rape, and sexual assault. The certifying official further listed section 9A.44.050 of the Revised Code of Washington, corresponding to rape in the second degree, as the corresponding statutory citation for the offense that was investigated and prosecuted by their department, and in describing the criminal activity, indicated that the Petitioner had the most information about the crime, that she provided a detailed statement regarding the information provided to her by her brother, and drove her brother and mother to their interviews with law enforcement. With the Supplement B, the Petitioner also submitted the police report describing law enforcement's interactions with the Petitioner, F-, and their family members. The record before the Director also included briefs, personal statements from the Petitioner and her spouse which are generally consistent with the facts in the police report and, a psychological evaluation. After the U application, the Director issued a request for evidence to which the Petitioner timely responded.

A. Summary of Relevant Evidence

The police report refers to interviews and statements from F-, the Petitioner, and other relatives between [] 2011 and [] 2012. The report indicated that F- had been at the Petitioner's home when he broke down and stated that he did not want to leave his sister's home because he was being sexually assaulted by O-, who had been living in the same apartment with F-, their mother, and other relatives. This prompted the Petitioner and their mother to seek medical assistance for F-, where he was reluctant to interact with both male medical professionals and police officers. Prior to this, when F- visited the Petitioner's home, he cried when it was time to go home and said that O- was "bad" but did not tell her why. The report determined that F- was sexually assaulted between approximately [] 2011 when O- moved into the apartment up until approximately two weeks prior to the report's writing in [] 2011. Further, the other relatives threw F- and his mother out of the apartment and threatened to physically assault them, have them deported, or have F- taken away from his mother if they called the police. F- was staying with the Petitioner at the time of the report's

¹ Initials used to protect the identities of individuals.

writing because he felt safer with her. In a [] 2011 interview with the police, the Petitioner said that F- was shy but willing to speak to a female interviewer about his experience and that she would drive him to that interview. At this interview, F- could not provide specific details of his sexual assault. However, the Petitioner provided a written statement describing the questions she had asked F- upon hearing that O- “would do things to him” and his responses with explicit details that F- about his oral and anal rapes. F- also told the Petitioner that O- said he would hit him with a stick and a belt, fear of which was why O- did not tell their mother what was happening. Additionally, the report refers to [] 2012 statements by the Petitioner’s mother that she believed that O- gave F- alcohol on at least two occasions to get him intoxicated in order to assault him. The record also includes the Petitioner’s written statement to the police, which is consistent with the account set forth in the police report. The report went on to state that the Petitioner was present when F- identified a photograph of O- in [] 2012 as the person who had harmed him. Finally, the report indicated that the case would be referred to the county prosecutor’s office to charge O- with rape in the second degree.

In her personal statements before the Director, the Petitioner asserted that she was a direct victim of the crime committed against her brother and that she suffered substantial mental abuse. She detailed her relationship with F-, her experience learning of his sexual assault, her assistance with the criminal investigation, her observations of how F-’s trauma continued to impact him, and how the experience has affected her own life and mental health.

B. Victim of Qualifying Criminal Activity

To establish eligibility for U nonimmigrant classification, the Petitioner must show that she 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, murder, 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).

In this case, the Director determined that the Petitioner was not a victim of qualifying criminal activity per 8 C.F.R. § 214.14(a)(14) because she had not suffered direct harm as a result of the crime, nor was she the spouse or child of a direct victim over the age of 21 as contemplated in 8 C.F.R. § 214.14(a)(14). The Director additionally found that the Petitioner did not qualify as a bystander victim as contemplated by U Nonimmigrant Status Interim Rule (U Interim Rule), as she had not shown that she suffered an unusually direct injury as a result of a qualifying crime, as required. Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007). Although the Director acknowledged the close relationship between the Petitioner and her brother, and how deeply the Petitioner was affected by

learning of his sexual assault, the Petitioner's injuries were not "unusually direct" because she was not living with F- at the time of the crime and was not under her care, nor did she witness nor was in the vicinity of the commission of the qualifying criminal activity.

On appeal, the Petitioner submits a new statement, a brief, and a new Supplement B. In addition to elaborating her claim that she is eligible for U nonimmigrant classification as a bystander victim, the Petitioner's statement asserts that F- continues to live with her, that their mother recently died, and that as a result F- now relies on her completely. The new Supplement B, signed by an assistant city attorney with the City Attorney's Office in [REDACTED] Washington, certifies obstruction of justice (in addition to rape, sexual assault, and abusive sexual contact) according to section 9A.87.020 of the Revised Code of Washington as a crime investigated or prosecuted. The Supplement B describes the Petitioner as the direct victim of obstruction due to her threats by the family of the perpetrator, which she reported to law enforcement, as a result of her cooperation with law enforcement in the investigation of her brother's sexual assault.

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

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" as "generally mean[ing] 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), neither the Act nor the regulations define the term "direct and proximate harm." In the preamble to the U Interim Rule, USCIS explained that the agency may, in limited circumstances, "exercise its discretion on a case-by-case basis to treat bystanders as victims 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. 53014, 53016 (Sept. 17, 2007). The preamble, most relevantly, references the Mandatory Victim Restitution Act of 1996 (MVRA), the Crime Victim's Rights Act of 2004 (CVRA), and the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) as "informative resource[s] in the development of th[e] . . . definition of victim" at 8 C.F.R. § 214.14(a)(14). *See* 72 Fed. Reg. at 53016. Both the MVRA and CVRA define "crime victim" as a "person directly and proximately harmed as a result of the commission of" a crime, 18 U.S.C. §§ 3663(a)(2) and 3771(e), and the AG Guidelines ground the "direct and proximate" language in the principles of "but-for" and "proximate" causation, whereby an individual is considered a "victim" of an offense if "the alleged harm [was] a . . . 'but-for' consequence" and "reasonably foreseeable result of the charged offense." AG Guidelines at 8-9 (rev. May 2012).² On appeal, the Petitioner asserts that the Director's determination that he was not the victim of his brother's murder is at odds with the MVRA, the CVRA, and the AG Guidelines.

However, unlike the broad formulation that may apply in the context of crime victim restitution and 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 Kisior v. Wilkie*, 139 S. Ct. 2400, 2415-16 (2019) (stating that if, after consideration of "the text,

² 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.

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”); 72 Fed. Reg. at 53017 (“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.”).

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); 72 Fed. Reg. at 53016 (providing that “USCIS does not anticipate approving a significant number of [petitions] from bystanders”). *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”). Relatedly, in looking to the use of the term “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 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. *See* 72 Fed. Reg. at 53016 (stating that “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.”).

2. The Petitioner Suffered Direct and Proximate Harm as a Result of Her Brother's Sexual Assault

In the present case, the Petitioner has established that a favorable exercise of discretion is warranted to determine that she suffered direct and proximate harm as a result of her brother's sexual assault and may be considered a victim for U nonimmigrant purposes.

The record shows that the Petitioner suffered direct and proximate harm due to her relationship with F- and how the revelation of his sexual assault affected her. As an initial matter, the preponderance of the evidence demonstrates that the Petitioner had a close relationship with F- and took on a parental role with him their whole lives, including when his sexual abuse took place. She described the challenges that F- experienced due to his disability and how she tried to protect him and provide for him because he could not take care of himself independently. She described F- as having the mental development of a four- or five-year-old child. Although people were not always kind to F- due to his disability, the Petitioner always watched out for him and did everything she could to care for him.

The Petitioner asserted that she was financially responsible for both F- and their mother once they were all living in the United States. Around 2011, the Petitioner and her family decided that F- and their mother should live with her sister-in-law, where O- also later moved in. During the period when F- was being sexually assaulted, the Petitioner called him almost every day to check on him and bring groceries and clothing to his apartment. He would also stay at her home for weeks at a time and began to exhibit unusual behavior, which the Petitioner later attributed to the trauma of the sexual abuse he was experiencing at the time. Although the Petitioner was not physically present for the commission of the repeated rapes F- was subjected to, he tried to tell her what was happening and eventually confided in her so he could escape the situation by instead remaining at her home.

When the Petitioner learned of the abuse, she was deeply emotionally affected. She felt guilty that she didn't realize what was happening and felt ashamed that she had not been able to protect her brother. She immediately sought medical care for him and welcomed him into her home to protect him from further abuse. In the course of reporting the crime, the police told the Petitioner and her mother that their help would be needed with the investigation due to F-'s disability. She encouraged F- to be honest with the police and supported him after his interviews when he was sad, upset, and confused. She also recalled F- as being afraid and in shock when he identified a photograph of O- at the police station.

Furthermore, the record also shows the repeated and violent nature of the crime, particularly given F-'s vulnerability due to his disability. O- raped F- on multiple occasions over five months in the home that they shared, gave him alcohol to facilitate the abuse, and threatened F- and his family with violence if he ever told anyone what O- had done. The Petitioner's statements indicated that F- never really understood what happened to him and got upset when he spoke about it.

The record also demonstrates that the Petitioner experienced unusually direct injury as a result of her brother's sexual assault. She contended that she struggled daily with the effects of F-'s sexual assault, and acknowledged that although she was not the direct victim of the crime, she sometimes felt like she was. The evidence in the record, particularly the Supplement B and documents from the certifying agency, indicates that F- trusted the Petitioner and needed her support and testimony to bring the

perpetrator to justice. When F- had difficulty speaking to the police what happened to him, the Petitioner provided the details of the rapes that F- had confided in her. In her new statement on appeal, she described the time period immediately following the sexual assault as the worst in her life and that she felt heartbroken every time she had to listen to the details. She later learned that she was experiencing symptoms of PTSD and depression, including a panic attack, and has experienced difficulty sleeping ever since.

The Petitioner's statements further detail how F-'s trauma has continued to affect her life. F- has lived with her since she learned he was being sexually abused in [REDACTED] 2011. She has tried to help him process his trauma and has taken him to therapy. Nonetheless, even at the time of the appeal submission in May 2022, 11 years after the abuse took place, the Petitioner reports that he has been profoundly impacted by his trauma and has therefore been harder for her to care for. The Petitioner stated that F- was "is not the same innocent and happy person he used to be"; he was now depressed, did not want to leave their home, would not let others hug or touch him, had trouble sleeping, and had blisters that she suggested resulted from his rapes. She also detailed the psychological impacts of this stress on her mother, who became a double amputee after the investigation of the crime took place. The Petitioner contended that both F- and her mother had been "destroyed" by the sexual assault. The Petitioner stated that she felt worried and pained by the knowledge that F- was still suffering from his sexual assault, but she had not been able to do anything to make him feel better. She stated that she was the person F- trusted most in the world and that she wanted to stay in the United States to continue supporting him.

We note that the second Supplement B additionally identified the Petitioner as a direct victim of obstruction of justice. O-'s family members directly threatened the Petitioner over the phone at 1:00AM in retaliation for her involvement in reporting the sexual assault to the police and also implicated her spouse and mother in these threats. The relatives said they knew where the Petitioner lived, that she was undocumented, and could have her deported to Mexico where they could easily make her "disappear". She described feeling angry with O-, particularly since she had heard the police were unable to arrest him, and she was still frightened for herself and her family about the threats from O-'s family because they knew the Petitioner had reported the crime to the police and because she had heard that his family had gang connections in Mexico.

The Director correctly determined that the Petitioner cannot qualify for U nonimmigrant classification under 8 C.F.R. § 214.14(a)(14)(i) as the parent of minor child, who is incompetent or incapacitated, against whom qualifying criminal activity was perpetrated. However, as a practical matter, in considering whether the Petitioner has experienced direct and proximate harm, we note that the instant case contains analogous factors to the consideration given to parents of incompetent or incapacitated minor children in determining eligibility for U classification. Although the victim here was an adult when the crime took place, he had diminished mental capacity due to his developmental disability and was unable to provide helpful information to law enforcement independently. In addition to the overall parental role the Petitioner played in F-'s life, the record shows it was she who provided the helpful information to law enforcement in order for the crime to be investigated.

Viewed in the totality, the evidence of the Petitioner's close and parental relationship with her brother, his dependence on her due to his disability, the violent and repeated nature of the crime, her active role in the reporting and investigation to F-'s sexual assault, the threats she received as a result of

doing so, and the ongoing trauma she continues to suffer demonstrate that her experience of her brother's sexual assault was akin to that of a victim of the offense. The Petitioner has established by a preponderance of the evidence that she warrants a favorable exercise of our discretion to determine that he suffered direct and proximate harm as a result of having been the victim of a qualifying crime, as 8 C.F.R. § 214.14(a)(14) requires.

As the Petitioner has overcome the sole ground for denial of the Petitioner's U petition on appeal and the Director did not otherwise address whether the Petitioner satisfied the remaining U nonimmigrant eligibility criteria at section 101(a)(15)(U)(i)(I)-(IV) of the Act, the matter will be remanded for the issuance of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new a decision consistent with foregoing analysis, which, if adverse, shall be certified to us for review.