



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

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

In Re: 25579593

Date: MAR. 15, 2023

Appeal of Nebraska 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. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, possessed information concerning the qualifying criminal activity, or was admissible to the United States. The matter is now before us on appeal.¹ 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 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, have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity, and that the qualifying criminal activity occurred in the United States or its territories or possessions. 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). 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 considered indirect 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

¹ We initially rejected the appeal but subsequently reopened the matter on our own accord.

activity or be helpful in the investigation or prosecution of the criminal activity.” 8 C.F.R. § 214.14(a)(14)(i). “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 the 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) determines whether a petitioner is inadmissible and, if so, on what grounds, when adjudicating a U petition, and has the authority to waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14).

II. ANALYSIS

The Petitioner filed her U petition in August 2015 with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) signed and certified by the chief assistant prosecutor in the Somerset County Prosecutor’s Office in [REDACTED] New Jersey (certifying official). The certifying official checked a box indicating that the Petitioner was the “witness to” criminal activity involving or similar to “Incest” and “Sexual Assault.” We note the certifying official crossed out “victim” in several places in Parts 3 through 6 of the Supplement B and wrote “witness” or “witness to” in its place. The certifying official did not list any statutory citations for the criminal activity being investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official provided that the Petitioner was the “witness of a sexual assault (incest allegation). The victim [her friend J-G-²] confided in [the Petitioner] that she was raped by her biological father . . .” When asked to provide a description of any known or documented injury to the victim, the certifying official described how the Petitioner reported J-G-’s disclosure to her guidance counselor and testified at the trial hearing, the court found the Petitioner’s testimony credible and admissible, the defendant pled guilty as a result, and the case would not have been prosecuted without the Petitioner’s cooperation and testimony. In response to a request for evidence (RFE), the Petitioner submitted a second Supplement B, signed and certified by the first assistant prosecutor of the [REDACTED] County Prosecutor’s Office (second certifying official). The second certifying official checked a box indicating that the Petitioner was the “witness to” criminal activity involving or similar to “Incest” and “Sexual Assault.” We note the second certifying official also crossed out “victim” in several places in Parts 3 through 6 of the Supplement B and wrote “witness” or “witness to” in its place. The certifying official listed New Jersey Statutes Annotated § 2C:14-3(a) (aggravated criminal sexual assault) as the statutory citation for the criminal activity being investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, the certifying official provided that the Petitioner was a fresh complaint witness, J-G- confided in the Petitioner about her assault, the Petitioner testified at a pre-trial hearing, and the defendant pled guilty to aggravated criminal sexual assault. When asked to provide a description of any known or documented injury to the victim, the certifying official did not list anything.

² Initials are used throughout this decision to protect the identity of the individual.

After considering the evidence in the record, the Director denied the U petition in October 2020, concluding that the Petitioner did not establish she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, possessed information concerning the qualifying criminal activity, or was admissible to the United States. The Director determined the Petitioner did not suffer substantial physical or mental abuse as the feelings of empathy she discussed for J-G- did not rise to the level of substantial mental abuse. As part of this determination, the Director addressed the details of the Petitioner's therapy records, noting there was no discussion of the incidents involving J-G- in them. The Director mentioned that the victim of the sexual assault was J-G-, and the Petitioner was not a witness to the crime as she did not observe the sexual assault, rather the information was relayed to her after it occurred. As such, the Director determined that the Petitioner was not the direct victim of, or witness to, qualifying criminal activity, and did not possess firsthand knowledge of the qualifying criminal activity. Lastly, the Director stated the Petitioner was inadmissible under section 212(a)(7)(B)(i)(I) of the Act for not possessing a valid passport or nonimmigrant visa, and she did not receive an approved Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

On appeal, the Petitioner asserts that she is an indirect victim, as a witness, to the crimes committed against J-G-. The Petitioner states that in February 2012, J-G- told her that she had been sexually assaulted for many years, the Petitioner told staff at her school about what happened, and the police were alerted. The Petitioner provided a statement to the police and testimony in the criminal case against J-G-'s father. Lastly, the Petitioner states that she has been traumatized and sought therapy to help cope with the overwhelming burden of the situation.

Based on a de novo review of the record, we adopt and affirm the Director's decision that the Petitioner did not establish she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough analysis of whether the Petitioner suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, as described above, and her submission on appeal does not overcome this finding. First, the Petitioner did not establish that she suffered substantial physical or mental abuse. While the record reflects that she has experienced emotional difficulty, it does not include sufficient evidence of substantial physical or mental abuse. Next, the record reflects that the Petitioner was not the direct victim of the crimes listed on the Supplement B, or an indirect victim based on a requisite family relationship under 8 C.F.R. § 214.14(a)(14)(i).

Furthermore, the Petitioner has not established she was a victim of qualifying criminal activity as a bystander. When referencing a "bystander" in the preamble to the Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,016 (Sept. 17, 2007), 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.”). In this case, the record reflects the Petitioner was not present during the commission of the crimes and did not concurrently suffer an unusually direct injury as a result of the crimes, rather she was informed of the crimes after they occurred. Because the Petitioner has not established she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, she is not eligible for U nonimmigrant status under section 101(a)(15)(U) of the Act.

Furthermore, as the Petitioner has not established that she suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity, we decline to address whether she possessed information concerning the qualifying criminal activity or is admissible to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.