U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28408686

Date: OCT. 24, 2023

Appeal of Nebraska Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 petition, concluding that the record did not establish that the Petitioner was a victim of qualifying criminal activity. The matter is now before us on appeal. 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 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; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity of which they are the victims. Section 101(a)(15)(U)(i) of the Act.

The regulation at 8 C.F.R. § 214.14(a)(14) defines a "victim of qualifying criminal activity" as one who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. A spouse, unmarried 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 (hereafter referred to as an "indirect victim") if 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).

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 at the time of the qualifying criminal activity. *See* 8 C.F.R. § 214.14(a)(14)(i) (stating that, "[f]or purposes of determining eligibility under this definition, USCIS considers the age of the victim at the time the

qualifying criminal activity occurred"); *see also* sections 101(a)(15)(U)(i)(II) and (III) of the Act 8 C.F.R. § 214.14(b)(2), (3) (authorizing 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 when the victim is under age 16 or is either incapacitated or incompetent). This presumption may be overcome, however, if the evidence plainly indicates that despite the direct victim's age being 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 nonimmigrant 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.

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 their 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). 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)-(iii). 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. Relevant Facts and Procedural History

The Petitioner filed his Form I-918 after his stepson was assaulted while walking home in 2016. In support of his Form I-918, the Petitioner submitted, in part, two Supplements B,[1] a police report, two personal statements, and a statement from his stepson. This evidence shows the Petitioner's stepson was 15 years old at the time of the incident and that he was punched in the nose resulting in a nasal fracture. The stepson ran to his home where his mother called the police. The stepson provided a statement to police and was then transported to the hospital by ambulance where he received treatment. While he was being transported, his mother called his stepfather, the Petitioner, who was at work. The Petitioner left work early and came to the hospital. The Petitioner stated that seeing his stepson's injuries after he arrived at the hospital caused him a great deal of pain and fear. The initial Supplement B stated that the stepson "gave a report to the police officer and remained available for

[1] The Petitioner's initial Supplement B was insufficient as the stepson was listed as the victim rather than the Petitioner. *See* section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i) (requiring a Supplement B from a law enforcement official certifying a *petitioner's* helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them) (emphasis added).

additional questions." A second Supplement B provided that the Petitioner suffered substantial emotional harm as a result of the assault on his stepson and continued by stating that the Petitioner was "available to provide assistance to the police," and therefore "was 'likely to be helpful' in the investigation." The Supplement B also stated that the Petitioner was present during his stepson's surgery and follow-up medical appointments, and that he provided his stepson transportation to and from his school.

As noted above, the Director denied the Form I-918 after concluding the Petitioner had not established he was a victim under 8 C.F.R. § 214.14(a)(14), either because he had suffered direct and proximate harm as a result of the crime, or alternatively, as an indirect victim (parent of direct victim under 21 years of age) because his stepson, the direct victim, was 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.

On appeal, the Petitioner claims that he qualifies as an indirect victim pursuant to 8 C.F.R. § 214.14(a)(14)(i) because his stepson was 15 years old at the time of the criminal activity and incompetent to care for himself in terms of medical care, transportation to and from appointments, and mentally dealing with the trauma of being the victim of the criminal activity. The Petitioner also asserts that even if he was not an indirect victim, he qualifies as a direct victim of the assault because he has suffered mental abuse in the form of post-traumatic stress disorder after witnessing his stepson in pain and suffering and assisting with the resulting medical process. A psychological assessment submitted on appeal states that the Petitioner met the diagnostic criteria for post-traumatic stress disorder by indirectly being exposed to a traumatic event.

B. Direct or Proximate Harm Not Established

USCIS 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 regulation at 8 C.F.R. § 214.14(a)(14) defines a "victim of qualifying criminal activity" as one who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity. We note that 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 Kisor v. Wilkie*, 139 S. Ct. 2400, 2415-16 (2019) (stating that if, after consideration of "the text, structure, history, and purpose of a regulation . . . genuine ambiguity remains, . . . the agency's reading must . . . be 'reasonable'" to warrant deference). We also 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 criminal activity is "deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity"); *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 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.").

However, "direct and proximate harm" will generally encompass only those individuals against whom qualifying criminal activity is directly committed. 8 C.F.R. § 214.14(a)(14); *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. at 53016 ("The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims."). Thus, any exercise of discretion to extend eligibility to individuals against whom a qualifying crime was not directly committed is 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. *Id.* ("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.").

Considering the foregoing, we look to the evidence in the record to determine if the Petitioner has established that he warrants a favorable exercise of our discretion to consider him a victim of qualifying criminal activity because he concurrently suffered an unusually direct injury as a result of the qualifying crime against his stepson. The record reflects that the Petitioner was not present during the crime and that he did not personally witness the criminal activity because he was still at work when the incident occurred. As noted, the record indicates the stepson went home after the assault where his mother called the police and the Petitioner only learned about the assault once his stepson had already spoken with the police and was en route to the hospital. The police report does not describe any unusually direct injury to the Petitioner and while the Petitioner's statements and the second Supplement B indicate that he suffered emotional harm as a result of the incident, the Petitioner describes this harm as resulting from seeing his stepson's injuries in the hospital, after the incident occurred. The psychological assessment confirms he was diagnosed with post-traumatic stress disorder after being *indirectly* exposed to the criminal activity. We acknowledge and do not seek to diminish the enduring emotional and mental trauma the Petitioner has suffered as a result of the assault on his stepson. However, the Petitioner has not established by a preponderance of the evidence that he contemporaneously suffered unusually direct injury warranting a favorable exercise of our discretion to determine that he suffered direct and proximate harm such that he qualifies as a victim of qualifying criminal activity under 8 C.F.R. § 214.14(a)(14).

C. Indirect Victim

As noted above, a parent may be considered a victim of qualifying criminal activity if 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. We acknowledge that the stepson was 15 years old at the time of the criminal activity and therefore may be presumed incompetent. As provided above, however, this presumption may be overcome if the evidence plainly indicates that despite the direct victim's age being under 16, they were not incompetent or incapacitated. The record as a whole establishes that despite the stepson's minor age at the time of the criminal activity, he was not incompetent or incapacitated, and therefore rebuts the presumption of incompetency due to his minor age. Immediately after the incident

occurred, the stepson was able to return to his home and provide a statement to the police without any assistance from the Petitioner or anyone else. Neither the Supplements B, nor other evidence in the record, reflect that the stepson had any subsequent encounters with the police or prosecutors, or additional courtroom appearances, that required the Petitioner's support or assistance.[2] And while the second Supplement B states that the Petitioner was available to provide assistance to law enforcement, there is no indication from the record that he ensured the criminal activity was reported, detected, investigated, or prosecuted on behalf of his stepson. The Petitioner has therefore not established by a preponderance of the evidence that his stepson was incompetent or incapacitated and thus unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the crime. Accordingly, the Petitioner has not established that he is a victim of the qualifying criminal activity under 8 C.F.R. § 214.14(a)(14) based on his familial relationship to the direct victim.

III. CONCLUSION

Based on the above analysis, the Petitioner has not established by a preponderance of the evidence that he was the victim of qualifying criminal activity. The Petitioner is therefore not eligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.

[2] Notably, the Petitioner provided in his personal statement that while a detective said they would call him if they made an arrest, he never received a phone call.