U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 29 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER: [redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that he was the victim of qualifying criminal activity and that he suffered resultant substantial physical or mental abuse. On appeal, counsel submits a brief, additional evidence, and documents already included in the record.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
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> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
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> (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
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> ***
>
> (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

> (b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially made a legal entry into the United States in 1992. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on May 14, 2012. On the same day, he filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) to waive his ground of inadmissibility. On July 3, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that he suffered resultant substantial physical and mental abuse. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner suffered substantial mental and physical injuries as the victim in two automobile accidents. She states that one of the car accidents resulted in a battery against the petitioner which is similar to felonious assault.

Claimed Criminal Activity

In his declaration, the petitioner recounted that on May 23, 1998, he was a backseat passenger in a vehicle involved in a car accident. At the time of impact, he hit his face on the seat in front of him. When the police arrived, he gave a statement. He began to feel pain in his jaw and went to the hospital where it was determined that he had a dislocated jaw. On August 5, 1998, he was again involved in a car accident as the passenger of a vehicle. After the accident, he gave a statement to the police and was taken to the hospital for pain in his chest and neck.

The Form I-918 Supplement B that the petitioner submitted was signed by prosecuting attorney for the County, Idaho, Prosecutor's Office (certifying official), on November 15, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and assault. In Part 3.3, the certifying official refers to Idaho Code § 18-903, battery, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the criminal activity was battery and "unlawful and intentionally causing bodily harm to an individual." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "suffered pain, popping, and had difficulty opening his jaw" as a result of two separate vehicle accidents that occurred in 1998. He stated the petitioner was a passenger in the first accident and "was the victim of a negligent driver" in the second accident.

Analysis

<u>Battery under Idaho Law is not Qualifying Criminal Activity</u>

The Form I-918 Supplement B indicates that the crime of battery, under Idaho Code § 18-903, was investigated. The crime of battery is not specifically listed as a qualifying crime at section

101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the crime investigated, battery, must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under Idaho law, a battery is "(a) Willful and unlawful use of force or violence upon the person of another; or (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or (c) Unlawfully and intentionally causing bodily harm to an individual." Idaho Code § 18-903 (West 2014). On appeal, counsel claims that because a vehicle was used in the crime, the petitioner is a victim of an aggravated battery. Aggravated battery, in pertinent part, is when a person "causes great bodily harm, permanent disability or permanent disfigurement" or "uses a deadly weapon or instrument." Idaho Code § 18-907 (West 2014). Idaho law defines assault as an "(a) An unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another; or (b) An intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent." Idaho Code § 18-901 (West 2014). Aggravated assault, in pertinent part, is an assault "[w]ith a deadly weapon or instrument without intent to kill" or an assault "[b]y any means or force likely to produce great bodily harm." Idaho Code § 18-905 (West 2014).

Counsel states that under Idaho law, "[t]he similarities between assault and battery are so significant that they are often mentioned together," and "[b]ecause of this, crimes of felonious aggravated battery in Idaho are significantly similar to crimes of felonious assault." No elements of battery under Idaho Code § 18-903 are similar to assault under Idaho Code §§ 18-901 or 18-905. The statute investigated in this case involves a person unlawfully and intentionally causing bodily harm to another person, and does not specify the commission of a violent injury as a necessary component. Aggravated assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon or by any means likely to cause great bodily harm. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. While at Part 3.6, the certifying official stated that the petitioner was a victim of a negligent driver, the record, including the traffic incident reports, contains no evidence that the certifying official or any other law enforcement entity detected or investigated the vehicle accidents as aggravated assault under Idaho law.

Counsel states that the petitioner suffers from jaw problems and headaches which are directly related to the vehicle accidents. However, as stated above, the proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). Counsel cites a decision by an Idaho court, which states that an automobile used in committing a battery is considered a deadly weapon; this decision does not, however, demonstrate the substantial similarities in the nature and elements of Idaho Code §§ 18-903 and 18-905. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Conclusion

Although the petitioner was helpful to the [redacted] County, Idaho, Prosecutor's Office in the investigation of the vehicle accidents in which he was injured, he has not demonstrated that the offense of battery under Idaho Code § 18-903 is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offense of which he was the victim is a qualifying criminal activity prevents him from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.