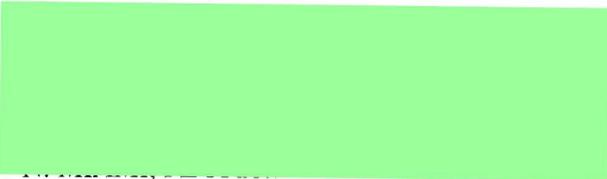


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



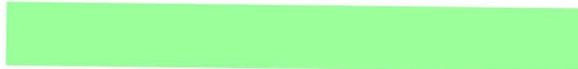
Date: **MAR 18 2014** Office:

VERMONT SERVICE CENTER



IN RE:

PETITIONER:



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:



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.

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 had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. On appeal, counsel submits a brief, additional evidence, and copies of 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 --

- (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);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (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
- (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;

(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 regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definition:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The term “[p]hysical or mental abuse means injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.” 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, United

States Citizenship and Immigration Services (USCIS) will assess 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[.]

8 C.F.R. § 214.14(b)(1).

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 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 Jamaica who entered the United States on June 8, 2003 on a B-2 nonimmigrant visa with authorization to remain until December 7, 2003. 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 December 16, 2011. In the Form I-918 Supplement B, the chief of police of the [REDACTED] police department certified that the petitioner was the victim of attempted felonious assault and armed robbery. The certifying official attested to the petitioner's possession of information regarding the crime and his helpfulness in the law enforcement agency's investigation and prosecution of the attempted felonious assault. On September 11, 2012, the director issued a Request for Evidence (RFE) stating that the evidence demonstrated that the petitioner was the victim of a certified crime, but additional evidence was requested to establish that he has suffered substantial physical or mental abuse as a result of the certified crime. Counsel responded to the RFE with statements and additional evidence. The director found the petitioner had not established that he had suffered substantial physical or mental abuse as a result of his victimization. Accordingly, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel contends that the petitioner suffered substantial mental abuse as a result of his victimization and it affects him daily. Counsel also asserts that the director did not give the proper weight to the previously submitted evidence.

Claimed Criminal Activity

In his statements, the petitioner recounted that on August 3, 2009, as he and his wife approached the elevator in their apartment building, they noticed a man standing very close to the petitioner's friend and rummaging in his pockets. The man was leaning at an angle and his shirt concealed his right hand while his left hand was in his friends' pocket. When the man pulled some money out of the petitioner's friends' pocket, he noticed the petitioner and his wife standing in the lobby and ordered them to get into the elevator. The petitioner told his wife to run and then he ran with their child in his arms. After reaching the road, the petitioner noticed his wife on the other side of the road and told her to call the police. As the petitioner was crossing the road, he noticed the man who robbed his friend driving out of the apartment complex. When the police arrived, they gave their statements and returned to their apartment. About 10 minutes after entering their apartment, the police asked the petitioner to help identify a vehicle and suspect, which he did. Later the petitioner learned that the suspect had a gun.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] (certifying official), on July 13, 2011. The certifying official lists the criminal activities of which the petitioner was a victim at Part 3.1 as felonious assault and armed robbery with a firearm. In Part 3.3, the certifying official refers to Florida Statute § 812.13(2)(A), armed robbery, 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 defendant robbed the petitioner's friend at gunpoint in the elevator of his apartment complex. The petitioner, his wife, and their child "who lived in the same complex, were in front of the elevator at the time. The defendant told [the petitioner] to come into the elevator where he was robbing [the petitioner's friend]. [The petitioner] told [his wife] to run and call the police and he took his child and ran. Both [the petitioner and his wife] are key witnesses against [the defendant]." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated in an attachment that the petitioner and his wife "have suffered severe mental abuse," they "had to relocate due to concerns for their safety," and they had trouble in their marriage "which ultimately resulted in their divorce."

Analysis

Victim of Qualifying Criminal Activity

[REDACTED] Arrest Form and Offense Incident Report indicate that the suspect was charged with violating Florida Statute § 812.13(2)(a), (armed robbery), and the petitioner and his wife witnessed this incident. The crime of armed robbery 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 robbery offense 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 Florida Statute, “[r]obbery means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.” Fla. Stat. Ann. § 812.13(1) (West 2013). Armed robbery occurs “[i]f in the course of committing the robbery the offender carried a firearm or other deadly weapon.” Fla. Stat. Ann. § 812.13(2)(a) (West 2013). Florida law defines assault as “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.” Fla. Stat. Ann. § 784.011(1) (West 2013). Aggravated assault is an assault “with a deadly weapon without intent to kill” or an assault “with an intent to commit a felony.” Fla. Stat. Ann. § 784.021(1)(a), (b) (West 2013).

No elements of armed robbery under Florida Statute § 812.13(2)(a) are similar to assault under Florida Statute §§ 784.011 or 784.021. The statute investigated in this case involves taking money or personal property from an individual through the use of force, violence, assault, or fear, and does not specify the commission of a violent injury as a necessary component. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon or while committing a felony. 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. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of felonious assault, there is no evidence that he or any other law enforcement entity investigated felonious assault, and only describes the petitioner witnessing his friend being robbed when recounting the criminal activity that was investigated or prosecuted at Part 3.5. The only crime certified at Part 3.3 of the Form I-918 Supplement B was armed robbery, and the incident report noted that the crime was Florida Statute § 812.13(2)(a). There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. The petitioner has not shown that any crime other than armed robbery was investigated by the law enforcement agency, or that armed robbery is substantially similar to any qualifying criminal activity, including felonious assault.

Bystander Witness

The petitioner also has not established that he is the victim of qualifying criminal activity as that term is defined at 8 C.F.R. § 214.14(a)(14). The regulation at 8 C.F.R. § 214.14(a)(14) defines “victim of qualifying criminal activity” as an alien who is directly and proximately harmed by qualifying criminal activity. The Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) clarify that “direct and proximate harm” means that “the harm must generally be a ‘but for’ consequence of the conduct that constitutes the crime” and that the “harm must have been a reasonably foreseeable result” of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In its Preamble to the U visa rule, USCIS stated:

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. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime.

According to the evidence in the record, the petitioner witnessed his friend being robbed. For the petitioner to be treated as a bystander witness, he must have suffered an unusually direct injury as a result of *the qualifying crime*. As noted above, armed robbery is not a qualifying crime, there is no evidence that the certifying agency investigated or prosecuted qualifying criminal activity, and the record fails to establish that armed robbery is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act, and the director's decision to the contrary is withdrawn.¹

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. Even if the petitioner could establish that he was the victim of qualifying criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, the certifying official states the petitioner and his wife suffered severe mental abuse which led to them relocating because of "concerns for their safety" and trouble with their marriage which ended in divorce. The certifying official also states they fear being in "common areas" at night and are both consulting psychologists. In his December 13, 2011 affidavit, the petitioner claimed that after witnessing his friend being robbed, he suffered severe mental stress and guilt, and the stress has taken a "physical toll on [him]." He also stated that he does not go out as often as he used to, he avoids being out at night, he is nervous, and he avoids using elevators. The petitioner's friend, [REDACTED] reports that the petitioner suffered "stomach pains, sweating, and a severe headache" when he thought of seeing the suspect in court. The petitioner stated that even though the suspect was in prison, he was still worried about his and his family's safety, and he moved them to another apartment community. He

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

explained that the stress affected his marriage which ended in divorce. [REDACTED] states that the petitioner's demeanor changed after the robbery; he stays home more, he is nervous in public, and he is more overprotective of his family. In his May 1, 2013 affidavit, the petitioner explains that he feels "handicapped" after the robbery, he suffers from paranoia, and his mental health is affecting his everyday life. Counsel claims that the petitioner's "mental health instability has affected his past decisions after the robbery, his everyday life, and his concerns for the future."

In his psychological evaluation dated October 9, 2011, [REDACTED] diagnosed the petitioner with major depression, generalized anxiety disorder, and post-traumatic stress disorder (PTSD). He stated that two and a half years after the incident, the petitioner "continue[d] to suffer symptoms of [PTSD] and depression," and his major depression was a consequence of his victimization. He reported that the petitioner's depression scores indicate that the petitioner has thoughts of suicide; though the petitioner denies having suicidal thoughts. In an updated letter dated November 15, 2012, [REDACTED] insisted that the petitioner "has haunting and intrusive recollections" of the robbery, he is depressed every day and "unable to function productively." He stated that the petitioner's PTSD only developed after the robbery incident, and his major depression may result in harm to his children or himself by suicide. [REDACTED] explained that the petitioner has not sought counseling "because in his culture only very 'sick' people" seek mental health treatment. In his updated psychological evaluation dated April 22, 2013, [REDACTED] reports that four years after the incident, the petitioner's depression has not diminished and he has suffered permanent harm to his mental health. He reiterates that the petitioner is suffering from major depression, generalized anxiety disorder, and PTSD, and his symptoms are interfering with his ability to function on a daily basis. He again states that his mental health conditions are a result of his victimization.

Although the evidence establishes that the petitioner has been diagnosed with depression, anxiety and PTSD, the record fails to establish that these problems are a result of having been a victim of any qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. In addition, there is no objective evidence establishing that the petitioner's physical ailments were a result of his victimization. Though the record shows that the petitioner is nervous and paranoid, the Form I-918 Supplement B, the statements from the petitioner, and the mental health documents fail to probatively discuss any permanent or serious harm the incident caused to the petitioner's appearance, health, or physical or mental soundness. The record does not show that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse. While we do not minimize what the petitioner experienced as a witness to an armed robbery, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

Conclusion

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). The petitioner has failed to establish that he was the victim of a qualifying crime, and the director's decision to the contrary is withdrawn. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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