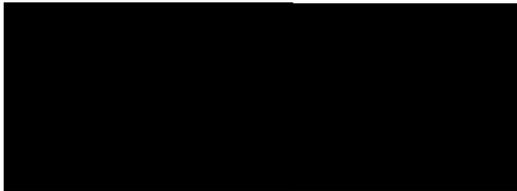




U.S. Citizenship
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S 14

Date: JUN 14 2012 Office: VERMONT SERVICE CENTER FILE:

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. § 101(a)(15)(U)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 petition will remain denied.

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

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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explained 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[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

Section 101(a)(15)(U) of the Act provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The regulation at 8 C.F.R. § 214.14(a) defines the terms *certifying agency* and *certifying official*, and states, in pertinent part:

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

- (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or
- (ii) A Federal, State, or local judge.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a citizen and native of China who states he entered the United States on or about January 1, 2000. On August 3, 2007, the petitioner was the victim of simple assault in the State of Mississippi. On August 9, 2007, the petitioner reported to the police that the perpetrators of the assault threatened him by telling his roommate that if the petitioner called the police again they would beat him up again. On October 29, 2007, the petitioner filed the instant Form I-918 U petition, but did not include the required *U Nonimmigrant Status Certification* (Form I-918 Supplement B). In response to a subsequent request for evidence (RFE) the petitioner again failed to provide the Form I-918 Supplement B and the director denied the matter on that basis. On June 17, 2010, the director reopened the matter to consider the petitioner's submission of a Form I-918 Supplement B. Finding the evidence submitted insufficient to establish the petitioner's eligibility, the director issued a second RFE. Upon review, the director found the petitioner ineligible for U nonimmigrant status because he failed to establish that he suffered substantial physical or mental abuse as a result of the simple assault. On appeal, counsel for the petitioner submits a brief and a psychological evaluation dated July 18, 2011.

The Petitioner Has Not Suffered Substantial Physical or Mental Abuse

The record includes the petitioner's October 26, 2007 affidavit, in which he stated that on August 3, 2007, two brothers who were workers at his workplace asked him for "protection money" and when he refused, they pushed him to the floor. The petitioner declared that he was then struck with a fist on his left eye, his lip was busted and he was also hit on the right side of the face and his right wrist. The petitioner indicated that other people reported this incident to the police and the police arrived on the scene. The record includes an August 4, 2007 police report regarding the August 3, 2007 incident. The police report indicates that an argument occurred between the petitioner and the perpetrators and the petitioner was pushed down causing the petitioner to hurt his back and that one

of the perpetrators struck the petitioner causing a black left eye and the second perpetrator joined in striking the petitioner until the police were called.

The Form I-918 Supplement B is dated December 14, 2009 and is signed by [REDACTED] Deputy Court Clerk, Corinth Municipal Court, Corinth, Mississippi. At Part 3.1 of the Form I-918 Supplement B, [REDACTED] identifies the criminal activity as simple assault. At Part 3.3 she identifies the statutory citations for the criminal activity that was investigated or prosecuted as "Simple Assault Citation [REDACTED]". At Part 3.5, [REDACTED] notes "see attached reports" to describe the criminal activity investigated or prosecuted. When asked to describe the known or documented injury to the petitioner at Part 3.6, [REDACTED] writes "copy of emergency room transcripts previously provided."

The emergency department discharge instruction dated August 6, 2007 included in the file lists the discharge diagnosis as "left orbital trauma/minimal sinusitis" and notes that the petitioner could return to work on August 7, 2007. The petitioner was given one dose of an oral antibiotic and antibiotic ointment was applied to his eye, and was instructed to follow up with an ophthalmologist.

The petitioner, in his October 26, 2007 statement, also reported that on August 9, 2007, the two perpetrators told his roommate that if the petitioner reported them to the police again they would beat him again and maybe kill him. The record includes a second police report dated August 10, 2007 indicating the petitioner reported this threat. In the petitioner's personal statement, he declared that he was afraid and to avoid further confrontations with the perpetrators he moved to New York. The record also includes photocopies of photographs of the petitioner's claimed injuries. The photographs, however, lack clarity and thus are of little probative value.

On appeal, the petitioner submits a July 18, 2011 psychological evaluation prepared by [REDACTED], licensed psychologist. [REDACTED] notes that the petitioner's symptoms and symptom history meet the diagnostic criteria of Posttraumatic Stress Disorder, Chronic (PTSD). [REDACTED] further indicates that the petitioner was worried about his immigration problems. [REDACTED] recommends that the petitioner seek antidepressant medication with his physician and that he work with the immigration authorities "to adjust his immigration status to that of a United States permanent resident, so that he can focus on his recovery."

Counsel asserts that although law enforcement charged the perpetrators with simple assault, the petitioner was the victim of brutal attacks which were followed by further threats, harassment, stalking and attempts at extortion. Counsel contends that the petitioner, in addition to suffering physical injuries, also suffers from residual emotional and psychological trauma tied to the attack. Counsel avers that the director did not fully and fairly consider the positive equities in the petitioner's case when rendering the discretionary decision.

Our review of the record fails to demonstrate that the petitioner suffered substantial physical or mental abuse. According to the petitioner's affidavit, he was struck with a fist on his left eye, his lip was busted and he was also hit on the right side of the face and his right wrist. However, the police report indicates that the petitioner hurt his back and suffered a black eye, which is inconsistent with

the petitioner's recounting of the incident. The petitioner did not seek medical treatment for his injuries until three days later, and while he was given antibiotics during his emergency room visit and was instructed to visit an ophthalmologist, the petitioner submitted no evidence that he sought the recommended or any further medical attention. Overall, the record does not include probative evidence that the petitioner suffered substantial physical abuse.

Similarly, the record does not establish that the petitioner was the victim of substantial mental abuse. While we do not minimize the emotional effects of the petitioner's fear, the record shows that the petitioner sought treatment for emotional distress almost four years subsequent to the attack. Moreover, although [REDACTED] diagnosed the petitioner with PTSD in July 2011, he attributes the petitioner's symptoms not only to the attack occurring in August 2007 but also to the petitioner's fears regarding his immigration status. Further, [REDACTED] does not discuss any treatment that the petitioner sought between the incident in August 2007, but rather notes that the petitioner reported no significant medical problems or previous psychiatric treatment.

While the petitioner's assault impacted his life, the evidence fails to demonstrate that he suffered substantial physical or mental abuse as a result of his victimization. Accordingly, the petitioner has not established that he is eligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

The Petitioner is Not a Victim of a Qualifying Crime

Beyond the decision of the director, the evidence fails to establish that the crime of which the petitioner was a victim is a qualifying crime or one substantially similar to qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Part 3.1 of the Form I-918 Supplement B indicates the crime of which the petitioner was a victim as simple assault, which is defined at section 97-3-7.1 of the Mississippi Code (MCA). Aggravated assault is defined at MCA § 97-3-7.2. Simple assault is not listed at section 101(a)(15)(U)(iii) of the Act as a qualifying crime, and the petitioner has provided no evidence that simple assault under MCA § 97-3-7.1 is substantially similar to any qualifying criminal activity enumerated under section 101(a)(15)(U)(iii) of the Act.

The Form I-918 Supplement B does not conform to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i)

The Form I-918 Supplement B that the petitioner submitted is deficient for several reasons.

First, the Form I-918 Supplement was provided by the Corinth, Mississippi Municipal Court. Section 214(p)(1) of the Act requires the law enforcement certification to come "from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity," and the regulations at 8 C.F.R. §§ 214.(a)(2) and (3) define the terms *certifying agency* and *certifying official*. The petitioner has provided no evidence that the Corinth, Mississippi Municipal Court may be considered a certifying agency under section 214(p)(1) of the Act or the regulation at 8 C.F.R. § 214.14(a)(2).

Second, even if the Court the could be considered a certifying agency, the Form I-918 Supplement B was signed by the Deputy Court Clerk, [REDACTED]; the head of the certifying agency at Part 2 is listed as [REDACTED]. There is no evidence that [REDACTED] designated the Deputy Court Clerk to issue law enforcement certifications on behalf of the Corinth Municipal Court.

Third and finally, the statutory citation for the crime at Part 3.3 does not correspond to the Mississippi Code. As stated previously, simple assault is defined at MCA § 97-3-7.1, whereas [REDACTED] provided the statutory citation as [REDACTED]. Without an accurate reporting of the Mississippi Code for the crime that was investigated or prosecuted, the Form I-918 Supplement B does not demonstrate that the petitioner was the victim of simple assault as claimed at Part 3.1. Accordingly, the Form I-918 Supplement B submitted by the petitioner in support of his Form I-918 U petition is not a law enforcement certification described at section 214(p)(1) of the Act.

Conclusion

The petitioner has not established that he was the victim of a qualifying crime as enumerated at section 101(a)(15)(U) of the Act, that he suffered substantial physical or mental abuse as a result of his victimization of a qualifying crime as required by 8 C.F.R. § 214.14(b)(1), or that the Form I-918 Supplement B is a law enforcement certification described at section 214(p)(1) of the Act.

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not met his burden and remains ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. Consequently, the appeal will be dismissed.

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