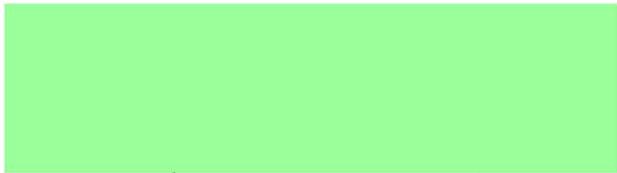




U.S. Citizenship
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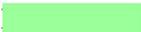


Date: APR 01 2013

Office: VERMONT SERVICE CENTER

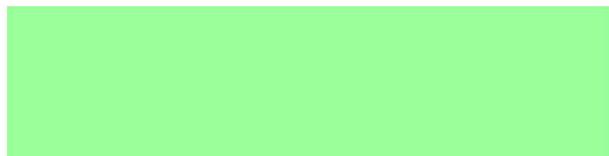
FILE: 

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. § 1101(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 our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director of the Vermont Service Center (the director) denied the U nonimmigrant visa petition (Form I-918, U 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 determined that the peti establish that the petitioner was the victim of a qualifying crime and met any of the eligibility criteria at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. On appeal, counsel submits a brief.

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[.]

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The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who last entered the United States on May 17, 2004 as a crewman. The petitioner filed the instant Form I-918 U Petition on June 6, 2011. On February 22, 2012, the director issued a Request for Evidence (RFE) to have the petitioner submit evidence that he was a victim of qualifying criminal activity and had suffered substantial physical or mental abuse as a result of the victimization. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner has timely appealed.

On appeal, counsel for the petitioner submits a brief. Counsel states, in part, that the petitioner was a victim of felonious assault and that, as a result of the assault, the petitioner is suffering from depression and anxiety and suffered physical injuries from the assault. The petitioner's claims fail to overcome the grounds for denial. We affirm the director's determinations and the appeal will be dismissed.

The Claimed Criminal Activity

The petitioner explained in his April 4, 2011 statement that he saw his wife being attacked, ran to her rescue and was punched, beaten and bitten by the assailant until the police arrived. While the assailant was eventually prosecuted and convicted for robbing his wife and other related crimes, counsel claims that the police investigated the crime of felonious assault against the petitioner.

The Petitioner is Not a Victim of Felonious Assault or any other Qualifying Criminal Activity

In this matter, the record contains a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), dated March 4, 2011, and signed by [REDACTED] Chief, Domestic Violence Bureau, Kings County, New York District Attorney's Office (certifying official). The certifying official identified the criminal activity at Part 3.1 as felonious assault, attempt and related crime. However, the certifying official provided the statutory citations for the criminal activity

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investigated or prosecuted at Part 3.3 as New York Penal Law (NYPL) sections 160.05¹ (robbery in the third degree), 155.30(5)² (grand larceny in the fourth degree), 155.25³ (petit larceny) and 165.40⁴ (criminal possession of stolen property in the fifth degree). The certifying official stated “see attached” at Parts 3.5 and 3.6 where she was asked to describe the criminal activity that was investigated or prosecuted as well as any known or documented injuries to the petitioner. The documentation attached to the Form I-918 Supplement B indicated that the petitioner was the second crime victim but does not discuss the crimes committed separately against each victim. The complaint completed by the responding police officer at the time of arrest states that the defendant struck the crime victim in the face causing physical injury but does not specify if the petitioner was the victim of assault and the extent of his injuries, if any. In a letter dated March 4, 2011, the certifying official stated that while the defendant robbed the petitioner’s wife, the petitioner came to her defense, struggled with the defendant and retrieved her property. The certifying official stated further that the perpetrator “was accused and convicted of a crime committed, not against [the petitioner], but against his wife.” The certifying official does not discuss whether the petitioner was a victim of felonious assault or any other qualifying criminal activity.

On appeal, counsel states that while the perpetrator was eventually prosecuted for other crimes against the petitioner’s wife, law enforcement officials investigated the crime of felonious assault against the petitioner.

U.S. Citizenship and Immigration Services (USCIS) determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(4). As explained in the preamble to the U nonimmigrant visa interim rule:

b. Additional Evidence to Satisfy the Eligibility Requirements. While USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a

¹ “A person is guilty of robbery in the third degree when he forcibly steals property.” N.Y. Penal Law § 160.05 (West 2013).

² “A person is guilty of grand larceny in the fourth degree when he steals property and when

5. The property, regardless of its nature and value, is taken from the person of another[.]” N.Y. Penal Law § 155.30 (West 2013).

³ “A person is guilty of petit larceny when he steals property.” N.Y. Penal Law § 155.25 (West 2013).

⁴ “A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.” N.Y. Penal Law § 165.40 (West 2013).

petitioner meets the eligibility requirements as established and defined in this rule.

72 Fed. Reg. 53014, 53024 (Sept. 17, 2007)

The certifying official indicated felonious assault at Part 3.1 of the Form I-918 Supplement B as the criminal activity of which the petitioner was a victim; however, she failed to list any section of the New York Penal Law relating to felonious assault at Part 3.3, which requires the certifying official to provide the statutory citations of the crime(s) investigated or prosecuted. In her March 4, 2011 letter attached to the Form I-918 Supplement B, the certifying official not only fails to state that the petitioner was the victim of felonious assault or any crime, but also provides no indication that her office or any other law enforcement entity investigated the crime of felonious assault against the petitioner. As noted earlier, the complaint completed by the responding police officer does not identify the petitioner as the individual who was struck in the face by the perpetrator. Consequently, the certifying official's indication of felonious assault at Part 3.1 is not supported by other statements in the Form I-918 Supplement B and other relevant evidence in the record and the petitioner cannot be considered a victim of felonious assault.

The record contains no evidence that the New York District Attorney, the certifying agency in this case, ever investigated or sought to prosecute the perpetrator of the robbery for a qualifying crime, including the crime of felonious assault. We recognize that qualifying criminal activity may occur in the course of the commission of a non-qualifying crime. See 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). However, the qualifying criminal activity must still be investigated or prosecuted by the certifying agency. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act, 8 U.S.C. §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, the record contains no evidence that the certifying agency investigated the crime of felonious assault.

Conclusion

Accordingly, the petitioner has not established 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 as defined at section 101(a)(15)(U)(iii) of the Act and the regulation at 8 C.F.R. § 214.14(a)(9), (14).

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

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