



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **APR 19 2013** 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:

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, 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)(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. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not show that she met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, counsel submits a brief.

#### *Applicable Law*

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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; stalking; 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; fraud in labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

<sup>1</sup> The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4, (VAWA 2013) that

“The term ‘any similar activity’ refers to 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).

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 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[.]

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.” In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, U.S. 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

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came into effect on March 7, 2013 was amended to include stalking and fraud in foreign labor contracting.

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or more of the factors automatically does not create a presumption that the abuse suffered was substantial. . . .

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 Indonesia who entered the United States on December 18, 2001 as a nonimmigrant visitor. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on February 21, 2012. On April 16, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that she had suffered substantial abuse as a result of qualifying criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity and, therefore, could not show that she met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because she was the victim of a robbery, which she claims is similar to the qualifying crime of felonious assault.

### *Claimed Criminal Activity*

According to the petitioner in her personal statement, on December 29, 2006, she was entering her apartment when a man grabbed her purse from her shoulder. Because the purse was over her shoulder, the petitioner fell to the ground and was dragged along the floor until she let go of the purse because she was hurt and scared. Once the police arrived, the petitioner filed an incident report.

### *Analysis*

Upon review, we find no error in the director's decision to deny the petition. In support of her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] Lieutenant of the Investigations Division of the Fontana, California, Police Department (certifying official). The certifying official listed the criminal act of which the petitioner was a victim at Part 3.1 as felonious assault. At Part 3.3, however, the certifying official listed the statutory citation of the crime investigated or prosecuted as California Penal Code (Cal. Penal Code) section 211 (robbery). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner was trying to locate the keys to her apartment when an unknown male grabbed her purse.

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The petitioner tried to retain her purse but due to the suspect's force and her fear she let go. The certifying official noted that the petitioner was cooperative but there were no workable leads to identify the subject. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner told an officer that she had not been injured.

Counsel contends robbery is substantially similar to felonious assault because the elements of robbery "include felonious assault" and because the certifying official checked the box for felonious assault at Part 3.1 of the Form I-918 Supplement B. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of felonious assault, the evidence in the record does not demonstrate that the crime of felonious assault or any similar crime was ever investigated or prosecuted. The certifying official did not list a statutory citation for felonious assault as criminal activity that was investigated or prosecuted; she only cited robbery. The police report noted that the crime was "robbery." 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 robbery was investigated or prosecuted by the law enforcement agency.

Furthermore, the petitioner has not shown that she was the victim of a qualifying crime. The particular crime that was certified, 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). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under the California Penal Code, robbery is defined as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Cal. Penal Code § 211 (West 2013).

Under the California Penal Code, assault is defined as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code § 240 (West 2013).

Assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:

(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245 (West 2013).<sup>2</sup>

No elements of robbery under Cal. Penal Code § 211 are similar to assault under Cal. Penal Code §§ 240 or 245. The statute investigated in this case involves taking personal property from an individual through the use of force 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. 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. Here, the certifying official did not indicate that her office or any other law enforcement authority investigated the perpetrator for any crime other than robbery.

On appeal, counsel claims that the facts of what occurred to the petitioner, or the perpetrator's actions, meet the statutory elements of assault. 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).

The petitioner has not demonstrated that the nature and elements of the criminal offense of which she was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault.

Here, the evidence in the record and counsel's contentions fail to establish that the criminal offense of which the petitioner was a victim, robbery, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### The Petitioner Does Not Meet Any of the Eligibility Criteria

The petitioner's failure to establish that she was the victim of qualifying criminal activity prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

#### Substantial Physical or Mental Abuse

Because the petitioner has not established that she was the victim of qualifying criminal activity, she has also failed to demonstrate that she suffered substantial physical or mental abuse as a result of such victimization. Even if her victimization was established, however, the record does not show that she

<sup>2</sup> In her brief, counsel incorrectly includes and emphasizes the phrase "or by any means of force likely to produce bodily injury," but that phrase is not part of Cal. Pen. Code § 245(a)(1).

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suffered substantial physical or mental abuse as a result.

In her February 16, 2012 statement, the petitioner recounted that the assailant dragged her across the ground and that she was hurt and scared. The petitioner indicated that after the robbery she was in pain on the left side of her body for many days, she cried, and could not sleep because she was scared. She stated that the attack has made her a more nervous person. The petitioner also submitted a statement from her cousin, [REDACTED] who stated that the petitioner was shaking and crying after the attack and that she was in pain for several days after the attack. The petitioner's cousin also noted that the petitioner is still very fearful of being alone and being outside.

The petitioner also submitted a psychological evaluation by [REDACTED] a licensed clinical social worker, who stated that the robbery "reactivated" some symptoms of posttraumatic stress in the petitioner, such as fearfulness. However, the social worker noted that at the time she evaluated the petitioner, she did not possess enough significant symptoms to qualify for a diagnosis of posttraumatic stress disorder (PTSD).

We recognize the petitioner's fear that the robbery instilled; however, the petitioner's affidavits and relevant evidence do not establish that she suffered resultant substantial physical or mental abuse. While she, her cousin and the social worker noted that the petitioner was in pain for a few days after the attack and is now more fearful, the petitioner has not provided sufficient evidence that would indicate that any abuse she suffered was substantial under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

### *Conclusion*

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); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, that burden has not been met.

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