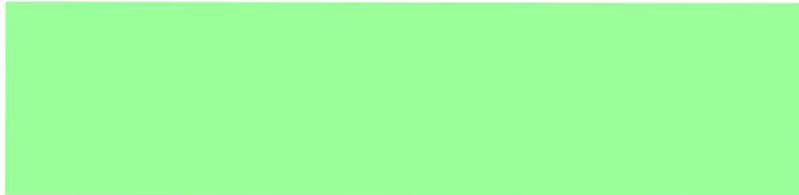


(b)(6)

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

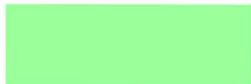


U.S. Citizenship  
and Immigration  
Services

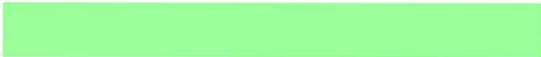


Date: **OCT 22 2013**

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:

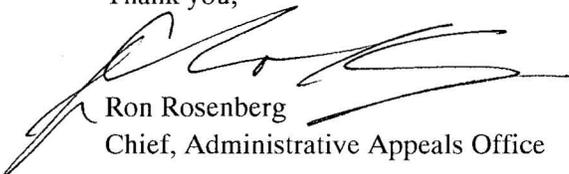


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification pursuant to 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 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 motion, counsel submits a brief and additional evidence.

*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 defines qualifying criminal activity as, in pertinent part:

- (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 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) provides the following pertinent definitions:

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. 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.

\* \* \*

(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.

#### *Facts and Procedural History*

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary. In 2010, the petitioner witnessed two men assault her co-worker during a robbery of the store where they were employed. 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 November 14, 2011. On November 13, 2012, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, finding that the petitioner had not demonstrated that she was the victim of qualifying criminal activity, and therefore did not meet any of the statutory requirements. On appeal, counsel asserted that the petitioner was the victim of robbery which, under California law, is a felonious assault, or in the alternative, similar to a felonious assault. Counsel also claimed that the petitioner is suffering psychological trauma as a result of the robbery.

The AAO dismissed the petitioner’s subsequent appeal in a decision dated May 10, 2013, incorporated here by reference. On motion, counsel again asserts that because robbery under the California Penal Code includes the elements of an assault and is punishable as a felony, it is equivalent to felonious assault, a qualifying crime. Counsel does not address the AAO’s finding that even if the petitioner had been the victim of qualifying criminal activity, she did not suffer substantial physical or mental abuse as a result of her victimization.

#### *Analysis*

##### Robbery is not a Qualifying Crime

In its prior decision, the AAO determined that the petitioner had not established that she was the victim of a qualifying criminal activity. On motion, counsel again contends that robbery is a felonious assault, or substantially similar to felonious assault. In support of her Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B in which the certifying official listed the criminal act of which the petitioner was a victim at Part 3.1 as felonious assault and other: robbery. Nothing else in the Form I-918 Supplement B refers to felonious assault, however. The

certifying official listed the statutory citation of the crime investigated or prosecuted only as Cal. Penal Code § 211 (robbery), and did not include any citations for felonious assault. As stated in the previous decision, the certifying agency does not state that it investigated or prosecuted an attempted or actual felonious assault upon the victim on the Form I-918 Supplement B, nor does any of the other evidence submitted suggest that any crime other than robbery was investigated or prosecuted.

The petitioner bears the burden of proof to demonstrate her eligibility for U nonimmigrant classification. 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. 369, 375 (AAO 2010). That burden includes showing that the petitioner was the victim of a qualifying crime that was investigated or prosecuted by a certifying law enforcement agency. The regulation at 8 C.F.R. § 214.14(c)(4) provides U.S. Citizenship and Immigration Services (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 felonious assault as the criminal activity that was investigated or prosecuted; the police report does not indicate that a felonious assault was investigated or prosecuted, and there is no other 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.

The petitioner has not shown that she was helpful in the investigation or prosecution of a qualifying crime. The particular crime that was certified as investigated or prosecuted, 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).

On motion, counsel argues that robbery in violation of Cal. Penal Code § 211 is similar to felonious assault because robbery is a felony and it includes “all the elements of both theft and assault.” Citing *People v. Sutton*, 35 Cal. App. 3d 264, 270-271 (1973). However, the “assault” referred to in *People v. Sutton* and which counsel refers to in her brief is assault as defined under Cal. Penal Code § 240. This is the general definition for simple, misdemeanor assault. For an assault to rise to the level of a felony under California law, it must involve caustic chemicals or flammable substances (Cal. Penal Code § 244), a deadly weapon (Cal. Penal Code § 248), or some other aggravating factor (Cal. Penal Code § 244.5 – 245.5).

Robbery under the California Penal Code 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). Robbery does not involve any of the aggravating factors listed above, and therefore does not include the same or similar elements as felonious assault under California law. Furthermore, robbery includes several elements, (the taking of personal property from another, from his person or immediate presence, and against his will), that

are not similar to or present in the definition of felonious assault under California law. As such, 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.

#### 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 qualifying victimization was established, however, the record does not show that she suffered substantial physical or mental abuse as a result.

In her initial personal statement, the petitioner recounted that three men were arrested for robbing the store where she worked. The petitioner stated that the first time she testified at their trial, she felt fear and anxiety and is now anxious and has nightmares. She also reported that she still works at the store where her co-worker was robbed, and that she often is fearful and distrustful of customers and can no longer work at the store by herself. In her affidavit dated December 10, 2012, the petitioner adds that she is constantly afraid, tense and suspicious. The petitioner's friends, [REDACTED] and [REDACTED] confirm that the petitioner has been fearful since the robbery. The petitioner submitted a letter from [REDACTED] a licensed marriage and family therapist who diagnosed the petitioner with posttraumatic stress disorder (PTSD) associated with the robbery; and a one-page letter from [REDACTED] a therapist intern, who also reported that the petitioner has experienced symptoms of PTSD.

The preponderance of the relevant evidence does not establish that the petitioner has suffered substantial physical or mental abuse as a result of her witnessing a robbery. The Form I-918 Supplement B and the accompanying police report do not demonstrate that the crime resulted in any injury to the petitioner. While the record shows that the petitioner's emotional health has been adversely affected by the robbery, the preponderance of the evidence does not demonstrate that she suffered substantial physical or mental abuse under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1).

#### 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.

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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.

*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). Here, that burden has not been met.

**ORDER:** The motion is granted. The appeal remains dismissed and the petition remains denied.