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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

Date: **OCT 22 2013**

Office:

VERMONT SERVICE CENTER

FILE:

IN RE:

PETITIONER:

APPLICATION:

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 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) 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 was the victim of qualifying criminal activity and consequently did not meet any of the eligibility criteria for U classification. On appeal, counsel submits a brief and additional evidence.

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: . . . false imprisonment; . . . 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 definitions:

(8) *Physical 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.

(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: . . .false

imprisonment; . . . felonious assault 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.

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

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 U.S. Citizenship and Immigration Services (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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who claims to have entered the United States in 2005 without inspection. In 2006, he voluntarily departed the United States, and later that year, he reentered without inspection. He 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 28, 2011. On January 6, 2012, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity and a completed Form I-918 Supplement B and additional evidence that he had. Counsel responded to the RFE with a completed Form I-918 Supplement B, an updated statement from the petitioner, and additional evidence which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

Claimed Criminal Activity

In his statements, the petitioner recounted that on May 28, 2009, he received a telephone call from his cousin asking the petitioner to pick him up at an automobile mechanic shop. His cousin stated that he was physically attacked by a group of men at the shop, and when the petitioner confronted the perpetrators, he was hit from behind. The petitioner and his cousin ran back to his car because he was afraid of being beaten up, and he called the police. He claims that he had pain in his face for about a week from being punched, and he is now afraid of groups of people.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Police Department (certifying official), on March 9, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as false imprisonment, felonious assault, and other: violent assault. In Part 3.3, the certifying official refers to Colorado Revised Statutes (C.R.S.) §§ 18-3-203 and 18-9-111, assault in the second degree and harassment, respectively, as the criminal activities that were 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 petitioner and his cousin "were victims of felonious assault when they took a car to a mechanic autoshop." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "was punched in the face."

The Petitioner was Not a Victim of False Imprisonment

In her appeal brief, counsel claims that the petitioner was the victim of the qualifying crime of false imprisonment because when he was punched from behind, the perpetrators intention was to "knowingly confine [the petitioner] against his will." Although the crime of false imprisonment is listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act, the record does not establish that false imprisonment was investigated or prosecuted by the certifying agency in this case. The Form I-918 Supplement B must certify that the petitioner was "a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting." 8 C.F.R. § 214.14(c)(2)(i). While the certifying official indicated that the petitioner was the victim of false imprisonment, felonious assault, and violent assault, the only crimes certified as investigated or prosecuted were assault in the second degree and harassment. The record contains no evidence that the certifying official or any other law enforcement entity investigated a crime of false imprisonment against the petitioner. The record also does not show that the crimes investigated or prosecuted, second degree assault and harassment, are substantially similar to false imprisonment. While

counsel asserts that “[t]he facts support a finding of false imprisonment,” the nature and elements of the offenses must be substantially similar to one of the qualifying crimes in order for the offense to qualify as any similar activity under section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9). Counsel provides no statutory analysis of the nature and elements of second degree assault and harassment to show that they are substantially similar to the qualifying crime of false imprisonment. The petitioner is, therefore, not the victim of the qualifying crime of false imprisonment.

Assault in the Second Degree under Colorado Law is Substantially Similar to a Qualifying Crime or Criminal Activity

The certifying official indicated that the petitioner was a victim of felonious assault and he listed the statutory citation for assault in the second degree as one of the crimes investigated or prosecuted. Under Colorado Revised Statutes, a person commits assault in the second degree if, in pertinent part, “[w]ith intent to cause bodily injury to another person, he causes serious bodily injury to that person or another.” Colo. Rev. Stat. § 18-3-203(1)(g) (West 2013). Assault in the second degree is also classified as a felony. Colo. Rev. Stat. § 18-3-203(2)(c) (West 2013). The Form I-918 Supplement B and supporting evidence establish that the petitioner was the victim of felonious assault, which is a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

The record shows that the petitioner was punched in the face while being attacked by a group of men. The director determined that the petitioner was not a victim of felonious assault because he was only punched in the face one time. 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. Here, the petitioner was the victim of felonious assault, and the relevant evidence shows that he was directly and proximately harmed by the qualifying crime. Accordingly, he has established the requisite victimization. The director’s determination to the contrary is hereby withdrawn.

Substantial Physical or Mental Abuse

Although the petitioner has established that he is a victim of a qualifying crime; he has not shown that he suffered substantial physical or mental abuse as a result of his victimization, as required by section 101(a)(15)(U)(i)(I) of the Act. 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).

In his statements, the petitioner claims that after being assaulted, he could not go to work and suffered pain in his face for a week. The petitioner reports in his March 6, 2012 statement that he initially thought something was wrong with his jaw bone, but “eventually the pain went away.” The petitioner’s statement is inconsistent with the March 13, 2012 letter of Ms. [REDACTED] a licensed clinical social worker, who states that according to the petitioner, his jaw is still sore. Ms. [REDACTED] opines that the petitioner meets the criteria for bipolar II disorder and posttraumatic stress disorder (PTSD), which she relates to the

assault. The petitioner also conveys that because of the assault, he is scared of groups of people, is prone to nightmares, cannot sleep, and is anxious. In her letter, the petitioner's wife states that he since the assault, the petitioner seems more cautious, has nightmares and is anxious at times.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the assault. Although Ms. [REDACTED] diagnoses the petitioner with PTSD related to the assault, she does not link his bipolar disorder with the crime. In addition, both Ms. [REDACTED] and the petitioner indicate that another significant contributing factor to his condition is his lack of immigration status, past immigration-related detentions, and fear of being returned to Mexico. As conveyed in Ms. [REDACTED]'s evaluation, the petitioner stated that the entire incident "only lasted approximately 20 minutes." The petitioner recounted that he was hit once and the Form I-918 Supplement B describes the petitioner's injury as being "punched in the face." The police incident report states "[t]his punch caused pain but no injury." The record also indicates that despite the incident's enduring effects on the petitioner, he has remained employed and maintained a healthy relationship with his wife. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has demonstrated that he possessed information about the crime and was helpful in the investigation or prosecution of the crime, which occurred in the United States. Accordingly, the petitioner meets the eligibility criteria at section 101(a)(15)(U)(i)(II)-(IV) of the Act. The petitioner has also established that he was the victim of the qualifying criminal activity of felonious assault. However, the petitioner has not demonstrated that as a result of his victimization, he suffered substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i)(I) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.