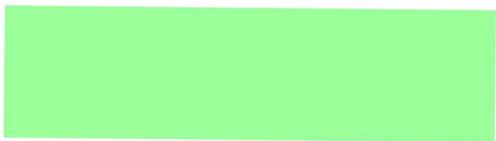




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 12 2014** 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:

SELF-REPRESENTED

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 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 denied the petition because the petitioner failed to establish that she was the victim of qualifying criminal activity and suffered resultant substantial physical or mental abuse. On appeal, the petitioner submits a statement 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;

Felonious assault is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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 petitioner is a native and citizen of Mexico who claims to have initially entered the United States on July 3, 2003 without admission, inspection or parole. The petitioner claims that she departed the United States in December 2007 and reentered in 2008 without admission, inspection or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 9, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On December 19, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered resultant substantial physical or mental abuse. The petitioner responded with additional evidence, which the director found

insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner claims that she suffered substantial emotional and psychological abuse as a result of being a victim of robbery, which is substantially similar to felonious assault.

Claimed Criminal Activity

In her declaration, the petitioner recounted that on March 3, 2011, she was parked in front of her house with her 8-month old son, when two men came up and pulled her out of her car. They took her purse, pushed her into the backseat where she landed on top of her son, and fled. She went into her house and called the police, and they arrived a few minutes later. The next day, the police called her to the police department to identify a suspect in a police lineup.

The Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant [REDACTED] Family Investigation Division, [REDACTED] California, Police Department (certifying official), on March 23, 2013. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211, robbery – strong arm, as the criminal activity that was 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 “was standing by her vehicle when approached by two suspect[s]; (S1) pushed her into her vehicle pulling the purse off her shoulder by force. Both suspects then fled on foot.” At Part 3.6, the certifying official indicated that no “visible injuries were observed.”

*Analysis*¹

Robbery under California Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and crime report from the [REDACTED] Police Department indicate that robbery was investigated. The crime of 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). Thus, the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 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 Cal. Penal Code, “[r]obbery is 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 2014). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2014). Assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:

¹ We conduct appellate review on a *de novo* basis.

(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 2014).

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.

The certifying official's indication at Part 3.1 that the petitioner was the victim of a felonious assault is without support in the record. The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the investigative report noted that the crime was CPC § 211 (robbery). There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the petitioner, and the certifying official does not explain why at Part 3.3 he provided a citation for robbery, not assault under California law, if a felonious assault against the petitioner was actually investigated or prosecuted.² 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 evidence of record does not demonstrate that the crime of felony assault was investigated or prosecuted.

On appeal, the petitioner claims that the crime of robbery "was of a felonious nature" and, therefore, "is similar and comparable to the qualifying crime of felonious 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 provided the requisite statutory analysis to demonstrate that the nature and elements of CPC § 211 (robbery) are substantially similar to CPC §§ 240/245 (assault) or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Accordingly, we shall not further address this issue.

² We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4).

(b)(6)

NON-PRECEDENT DECISION

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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 appeal is dismissed. The petition remains denied.