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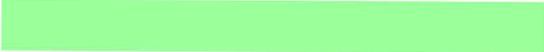
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: Office: VERMONT SERVICE CENTER FILE:   
OCT 10 2014

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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) 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.

*Applicable Law*

Section 101(a)(15)(U) of the Act provides 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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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).

The term *Investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.” 8 C.F.R. § 214.14(a)(5).

The eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act are further explicated in the regulation at 8 C.F.R. § 214.14(b). 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 Ecuador who entered the United States in August 2008 without admission, inspection or parole. 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) and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), on May 18, 2012. On July 5, 2013, the director issued a Request for Evidence (RFE) for the petitioner to establish: (1) that the crime of misdemeanor assault is substantially similar to one of the qualifying criminal activities set forth in section 101(a)(15)(U)(iii) of the Act; and (2) that the petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. The petitioner responded to the RFE with an updated statement, duplicate police records, and supporting letters. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on January 14, 2014, concluding that the petitioner had not established that she was the victim of qualifying criminal activity and, therefore, was unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel submits a brief, asserting that the certifying official certified that the petitioner was a victim of felonious assault, that the "detection" of the felony assault by law enforcement was sufficient for purposes of establishing that qualifying criminal activity was "investigated or prosecuted" as required, and that, alternatively, the crime of misdemeanor assault committed against the petitioner is similar to the qualifying crime of felonious assault.

#### *Claimed Criminal Activity*

The petitioner, in her personal statement, indicated that she was a victim of assault on December 1, 2009. She stated that she was walking home from work that night when she noticed a blue minivan parked between her residence and the residence next to hers. As she got closer, she noticed that the sliding door of the van was open, but nobody was inside. When the petitioner was about to go into her home, a man with a ski mask ran from around the other side of the van and attacked her. He grabbed her by the shoulders and dragged her to the open door of the van. The petitioner began kicking her feet and yelling out of fear of

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what could happen. The man got the petitioner into the van and the petitioner started screaming loudly. When the attacker put his hand over the petitioner's mouth, one of his fingers slipped into her mouth and the petitioner bit it. The attacker released his hold on the petitioner, who was able to escape from the van into her home where someone called the police. The petitioner noticed her mouth was bleeding from a cut from her attacker's nails when he tried to cover her mouth. Both the petitioner's wrists were swollen and had bruises. The petitioner provided the police with all the information requested.

The Form I-918 Supplement B that the petitioner submitted was signed on February 22, 2012 by Captain [REDACTED] Police Department, [REDACTED] Minnesota (certifying official). The certifying official checked the box for "felonious assault" at Part 3.1 as the criminal activity of which the petitioner was a victim. In Part 3.3, the certifying official cited section 609.224 of the Minnesota Statutes Annotated (M.S.A.), which relates to the offense of misdemeanor assault, as the relevant statute for the criminal activity that was investigated or prosecuted. At Part 3.5, which asks for a brief description of the criminal activity being investigated or prosecuted, the certifying official stated that the petitioner was assaulted by an individual who grabbed her from behind and tried to pull her into a van. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, it indicates that the petitioner had bruises on her arms, had a scratch on her lips, and was bleeding.

### *Analysis*

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition based on the stated grounds.

### Misdemeanor Assault Is Not Substantially Similar to Any Qualifying Criminal Activity

The record shows that the petitioner was a victim of misdemeanor assault on December 1, 2009. Although the Form I-918 Supplement B at Part 3.1 indicates that the petitioner was a victim of felonious assault, the certifying official specifically cited only the statute for misdemeanor assault under M.S.A. § 609.224 as the relevant statute for the criminal activity that was investigated or prosecuted. The record otherwise lacks any evidence that felonious assault, which is a qualifying criminal activity, was also detected, investigated or prosecuted.

On appeal, counsel asserts that it is sufficient that the certifying official marked the box for "felonious assault" at Part 3.1 of the Form I-918 Supplement B to show that the petitioner was the victim of felony assault under Minnesota law.<sup>1</sup> Counsel further notes that "detection" is included in the definition of "investigation or prosecution" at 8 C.F.R. § 214.14(a)(5).

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<sup>1</sup> Counsel also notes that the [REDACTED] Police Department could have investigated the criminal activity against the petitioner under subsection 4 of M.S.A. § 609.224, which allows for a fifth degree misdemeanor assault charge to be classified as a felony under certain limited circumstances. However, the record lacks any evidence that the certifying agency considered it appropriate to classify the criminal activity as a felony or investigated the attack as anything other than misdemeanor assault. The Form I-918 Supplement B and the attached police reports do not demonstrate that any of the circumstances specified at subsection 4 M.S.A. § 609.224 existed to classify the criminal activity as a felony.

When determining what criminal activity a certifying agency detected, investigated or prosecuted, we look to the relevant criminal statute as provided on the Form I-918 Supplement B and on any accompany reports. According to the certification and the police report, the criminal activity that was investigated or prosecuted was misdemeanor assault under Minnesota law. Neither document references the felony assault statute, or demonstrates that felony assault was detected during the course of the investigation into the crime perpetrated against the petitioner. Accordingly, the record demonstrates that the petitioner is the victim of misdemeanor assault, rather than felony assault.

The crime of misdemeanor assault 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 crime investigated, criminal threats, 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.

Counsel maintains on appeal that the assault offense under M.S.A. § 609.224, of which the petitioner was a victim, is substantially similar to third degree felony assault under M.S.A. § 609.223, which would constitute a qualifying criminal offense.

At the time of the commission of the criminal activity in 2009, M.S.A. § 609.224 provided, in pertinent part, as follows:

Sec. 609.224. Assault in the fifth degree

Subdivision 1. Misdemeanor. Whoever does any of the following commits an assault and is guilty of a misdemeanor:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death;
- or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another.

\* \* \*

Minn. Stat. Ann. § 609.224 (West 2009).

In 2009, third degree felony assault under M.S.A. § 609.223 provided, in pertinent part, as follows:

Sec. 609.223. Assault in the third degree

Subdivision 1. Substantial bodily harm. Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment

of a fine of not more than \$10,000, or both.

\* \* \*

Minn. Stat. Ann. § 609.224 (West 2009).

The statutory elements of misdemeanor assault under M.S.A. § 609.224 are not substantially similar to those of felonious assault under M.S.A. § 609.223. A fifth degree misdemeanor assault offense under Minnesota law involves committing an act with the intent to cause fear in another person of immediate bodily harm or death or the actual intentional infliction (or attempt) of bodily harm upon another. M.S.A. § 609.224. However, third degree felony assault under Minnesota law requires, as an element of the offense, the presence of an additional aggravating factor, such as the infliction of a greater level of harm (*substantial* bodily harm).<sup>2</sup> The distinction between the two offenses is recognized under Minnesota law, which categorizes assault under M.S.A. § 609.224 as a misdemeanor offense, for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed, while assault under M.S.A. § 609.223 is designated as a felony, for which a sentence of imprisonment for more than one year may be imposed. Minn. Stat. Ann. § 609.02 (West 2009). Accordingly, in comparing the statutory elements of simple and felony assault under Minnesota law, we find that the two offenses are not substantially similar. See 8 C.F.R. § 214.14(a)(9).

Counsel contends that the acts perpetrated against the petitioner are more analogous to third degree felony assault under M.S.A. § 609.223, and thus, are substantially similar to felonious assault. As stated above, however, 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 crime that was investigated and one of the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The petitioner has, therefore, failed to establish that she was the victim of a qualifying crime, 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.

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<sup>2</sup> As used in Chapter 609 of the M.S.A., the term “bodily harm” means “means physical pain or injury, illness, or any impairment of physical condition,” while “substantial bodily harm” means “means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. Ann. § 609.02 (West 2009).

Possession of Credible or Reliable Information Establishing Knowledge Concerning Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, USCIS or other federal, state or local authorities investigating or prosecuting qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act.

*Conclusion*

The petitioner has failed to demonstrate that the offense of misdemeanor assault under M.S.A. § 609.224 is a qualifying crime or substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offense of which she was the victim is qualifying criminal activity prevents her from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. Consequently, she is statutorily ineligible for U nonimmigrant status.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.