



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **OCT 29 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:

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 did not establish that: she was the victim of qualifying criminal activity; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; or she was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, counsel submits a statement.

*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: . . . 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:

(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 . . . . 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;
- (2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .
- (3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and
- (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 Honduras who claims to have initially entered the United States on July 29, 1998 without admission, inspection or parole. On August 17, 1998, an immigration judge ordered the petitioner removed from the United States. On September 22, 1998, she was removed from the United States, and reentered in December 1998 without admission, inspection or parole. She claims to have departed the United States in 2010, and reentered on April 23, 2011 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) on June 29, 2012. On the same day, the petitioner filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On August 23, 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 director also noted that the petitioner was inadmissible to the United States, her Form I-918 Supplement B was signed more than six months preceding the submission of the Form I-918 U petition, and he requested that the petitioner submit an updated Form I-918 Supplement B. On October 16, 2013, the petitioner, through counsel, responded to the RFE with an updated Form I-918 Supplement B and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the Form I-192. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner suffered harm as the victim of a robbery, which is substantially similar to felonious assault.

#### *Claimed Criminal Activity*

In her statements, the petitioner recounted that in the afternoon of November 3, 2008, as she was walking home, she was punched and pushed from behind by an unknown male suspect. When she fell into the street, the suspect pulled her purse from her arm but she held on and he dragged her on the ground. She eventually let go of her purse and the suspect ran away. The incident occurred near her house, so when she began

yelling for help, her son came to help her. A woman also stopped her car and helped the petitioner. When the police arrived, the petitioner gave a statement.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the director's RFE. The first Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant [REDACTED] California, Police Department, on September 26, 2011. Lieutenant [REDACTED] listed the criminal activities of which the petitioner was a victim at Part 3.1 as felonious assault and felonious robbery. In Part 3.3, Lieutenant [REDACTED] referred to California Penal Code (CPC) § 211, robbery – strong arm, as the criminal activity that was investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, Lieutenant [REDACTED] indicated that on November 3, 2008, the petitioner was walking “when the [s]uspect approached her from the rear and grabbed her purse. [The petitioner] put up a brief struggle to keep the purse; however the [s]uspect forcefully pulled it from her.” He noted that the petitioner suffered an injury to her shoulder.

The second Form I-918 Supplement B that the petitioner submitted along with her RFE response was signed by Lieutenant [REDACTED] (certifying official) of the [REDACTED] California, Police Department. The certifying official listed the same criminal activities being investigated as the first Form I-918 Supplement B, and provided the same narrative regarding the criminal activity being investigated. At Part 3.6, the certifying official indicated that the petitioner suffered an injury to her shoulder and hand.

### *Analysis*

#### Robbery under California Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and Incident 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. On appeal, counsel claims that under California law, assault is a lesser included offense of robbery; therefore, robbery is substantially similar to assault.

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:

- (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. 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. The certifying official does not indicate that felonious assault or any qualifying crime was investigated along with the robbery; there is no evidence that he or any other law enforcement entity investigated a qualifying crime, and he only describes at Part 3.5 the suspect forcefully grabbing the petitioner's purse and her struggling to keep her purse when recounting the criminal activity that was investigated or prosecuted. 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 or any other qualifying crime. The petitioner has not shown that any crime other than robbery was investigated by the law enforcement agency.

In response to the RFE, counsel argued that robbery, in violation of CPC § 211, is similar to felonious assault because “[a]ssault is a lesser inclusive offense of robbery.” On appeal, counsel notes that the “events surrounding the attack [the petitioner] suffered” constituted felonious assault. He claims that the petitioner suffered injuries and has fear regarding the incident. 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.

#### 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.

#### Possession of Information 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 information concerning such a crime or 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.

Jurisdiction

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that the qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court, as required by section 101(a)(15)(U)(i)(IV) of the Act.

*Conclusion*

Although the petitioner was helpful to the [REDACTED] California, Police Department in the investigation of the crime committed against her, she has failed to establish that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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. The petition remains denied.