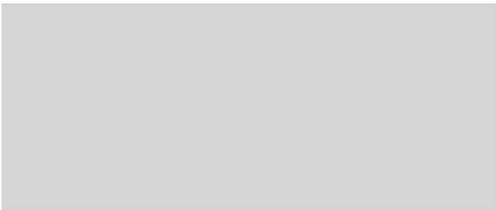


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

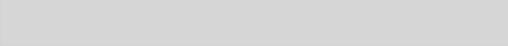


U.S. Citizenship  
and Immigration  
Services

(b)(6)

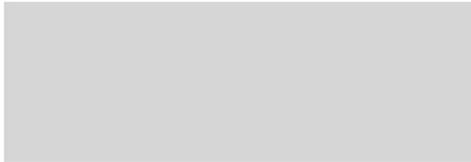


Date: **APR 02 2015** Office: VERMONT SERVICE CENTER FILE: 

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 Acting 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 he has been the victim of qualifying criminal activity, he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity, and he has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. On appeal, the petitioner 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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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.” 8 C.F.R. § 214.14(a)(9).

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

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.

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918[.]

\* \* \*

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 citizen of Guatemala who claims to have entered the United States without inspection in March 2004. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on September 24, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The director subsequently issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity and that he suffered resultant substantial harm. The petitioner timely responded with additional evidence which the director found insufficient to establish eligibility and denied the Form I-918 petition and the Form I-192 application. The petitioner timely appealed the denial of the Form I-918 petition.

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

#### *Claimed Criminal Activity*

The Form I-918 Supplement B was signed by Lieutenant [REDACTED], Special Victims Unit, [REDACTED] Metropolitan Police Department, [REDACTED] Nevada (certifying official), on July 3, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "Other: Burglary & Robbery." In Part 3.3, the certifying official referred to Nevada Revised Statutes (Nev. Rev. Stat.) §§ 205.067 (Invasion of the home) and 200.380A (Robbery), as the criminal activity that was investigated

or prosecuted.<sup>1</sup> At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the petitioner had “punches to the head and body” and that the assailant “grabbed [the petitioner’s] wallet and took his debit card.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner had “mental anguish and instability” and was fearful that his assailant would return to harm him.

*Invasion of the home and Robbery under Nevada Law are not Qualifying Criminal Activities*

The director denied the petition because the petitioner did not establish that he was the victim of qualifying criminal activity. The Form I-918 Supplement B reflects that invasion of the home and robbery had been investigated. Although these crimes are not specifically listed as a qualifying crime or criminal activity at section 101(a)(15)(U)(iii) of the Act, the statute also provides for any “similar activity” to those qualifying 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 offenses must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question.

Under Nev. Rev. Stat. Ann. § 205.067, Invasion of the home is defined as follows:

1. A person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home.
2. A person convicted of invasion of the home is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years . . . A person who is convicted of invasion of the home and who has previously been convicted of burglary or invasion of the home must not be released on probation or granted a suspension of sentence.

\* \* \*

4. A person convicted of invasion of the home who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$10,000.

5. As used in this section:

- (a) “Forcibly enters” means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.
- (b) “Inhabited dwelling” means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner or other lawful occupant resides.

<sup>1</sup> On appeal, the petitioner submits a register of actions which shows that his assailant was charged with battery, a misdemeanor, under Nev. Rev. Stat. Ann. § 200.481.

At Part 3.3 of the Form I-918 Supplement B, the certifying official listed generally Nev. Rev. Stat. Ann. § 205.067 as the criminal activity that was investigated or prosecuted, but did not identify any specific subsection of the statute.

Robbery is defined under Nev. Rev. Stat. Ann. § 200.380 as follows:

1. Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

2. A person who commits robbery is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

On appeal, the petitioner states that as the police incident report indicates that his partner's brother hit him on the head and body and knocked him to the ground, he has sufficiently established that he is a victim of felonious assault and domestic violence which are qualifying crimes. However, when determining whether certified criminal activity is substantially similar to a statutorily enumerated crime, 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 investigated and one of the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9).

In Nevada, the term "assault" means "(1) Unlawfully attempting to use physical force against another person; or (2) Intentionally placing another person in reasonable apprehension of immediate bodily harm." Nev. Rev. Stat. Ann. § 200.471. An assault is classified as a felony only if an aggravating factor is involved, such as a deadly weapon. *Id.*

Although the crime of Invasion of the home under Nev. Rev. Stat. § 205.067(4) has elements similar to a felonious assault in Nevada, the certifying official has only generally identified Nev. Rev. Stat. § 205.067 as having been investigated or prosecuted. Because the crime of Invasion of the home may be satisfied without any aggravating factors, and the certifying official has not identified any specific subsection of Nev. Rev. Stat. § 205.067 as the crime that was detected, investigated, or prosecuted, the petitioner has failed to establish that home invasion is substantially similar to felonious assault. Furthermore, the crime of robbery under Nev. Rev. Stat. Ann. § 200.380 does not have elements similar to felonious assault under Nev. Rev. Stat. Ann. § 200.471.

The petitioner also states that he is a victim of the qualifying crime of domestic violence because he was assaulted by his partner's brother. Section 33.018 of Nevada Revised Statutes provides, in part, that:

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

- (a) A battery.
- (b) An assault.

\* \* \*

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

The petitioner argues that the Supreme Court of Nevada determined that the term "related by blood or marriage" includes the relationship between a sister-in-law and a brother-in-law. *City of Las Vegas v. Eighth Judicial Dist. Court ex rel Cnty. of Clark*, 124 Nev. 540, 545, (2008). Although the petitioner states he was beaten by his brother-in-law, he has not established that he was married to his assailant's sister at the time of the assault. In addition, although the petitioner and his partner resided together and have a child in common, under Nevada law the petitioner is not related to his assailant by blood, as the term "blood" is defined as "[a] relationship between persons arising by descent from a common ancestor." *Black's Law Dictionary* 194 (9th ed. 2009). Moreover, the petitioner did not indicate his assailant resided with him at the time of the assault or was a former member of his household. Although domestic violence is a qualifying crime, the petitioner has not demonstrated that he had familial relationship with his assailant or otherwise satisfied the definition of domestic violence victim at Nev. Rev. Stat. Ann. § 33.018. Accordingly, the petitioner has failed to establish that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

### Conclusion

The petitioner failed to establish by a preponderance of evidence that he was the victim of a qualifying crime or criminal activity. In consequence of his failure to establish that he was the victim of qualifying criminal activity the petitioner cannot meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Furthermore, the petitioner is inadmissible to the United States and his ground of inadmissibility has not been waived. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his petition must be denied.

(b)(6)



*NON-PRECEDENT DECISION*

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As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.