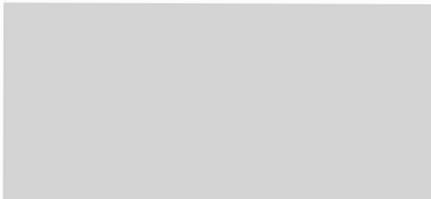


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 10 2015**

Office: VERMONT SERVICE CENTER

FILE: 

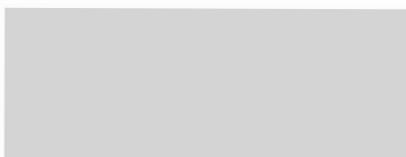
IN RE:

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 she has been the victim of qualifying criminal activity, that she has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that she possesses credible and reliable information establishing that she has knowledge of the details concerning the qualifying criminal activity, and that she has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. The petitioner timely appealed the denial of the petition.

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).

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.

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

Page 4

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 Mexico who claims to have entered the United States without inspection on September 20, 1996. 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 October 23, 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 she suffered resultant substantial harm. The petitioner timely responded with a letter from her attorney and additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director 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. Based on the evidence in the record and the petitioner's statements on appeal, the petitioner has failed to overcome the director's decision to deny the petitioner's Form I-918 petition.

Claimed Criminal Activity

The Form I-918 Supplement B was signed by [REDACTED] Police Department, [REDACTED] Minnesota, (certifying official), on [REDACTED] 2012. 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 listed Minnesota Statutes (Minn. Stat.) § 609.245, Aggravated robbery, as the criminal activity that was investigated or prosecuted. The certifying official left blank Part 3.6, which asks for a description of any known or documented injury to the petitioner.

Aggravated Robbery under Minnesota Law is Not a Qualifying Criminal Activity

The Form I-918 Supplement B reflects that Minn. Stat. § 609.245 (Aggravated robbery) was investigated. Although this crime is 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 listed 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 robbery offense 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 Minn. Stat. § 609.245, Aggravated robbery, a felony,¹ is defined as follows:

¹ "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed. Minn. Stat. § 609.02, Subd. 2. Felony.

Subdivision 1. First degree. Whoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree and may be sentenced to imprisonment for not more than 20 years . . .

Subd. 2. Second degree. Whoever, while committing a robbery, implies, by word or act, possession of a dangerous weapon, is guilty of aggravated robbery in the second degree and may be sentenced to imprisonment for not more than 15 years . . .

In Minnesota, "simple assault" is defined as either "an act done with intent to cause fear in another of immediate bodily harm or death" or "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10. For an assault to be considered aggravated, it must involve serious or substantial bodily injury and/or use of dangerous weapon or be committed against a protected individual. See Minn. Stat. Ann. § 609.221-223. The certifying official has not identified which specific subsection of the Aggravated robbery statute was investigated or prosecuted. Subdivision 2 of Minn. Stat. § 609.245 does not require the use of a dangerous weapon (or similar article) or other aggravating factors. Accordingly, the Form I-918 Supplement B does not contain the requisite information to demonstrate that the Aggravated robbery crime which was investigated is substantially similar to felonious assault. The petitioner has, therefore, 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.

Substantial Physical or Mental Abuse

When assessing whether substantial physical or mental abuse was suffered as a result of having been a victim of qualifying criminal activity, USCIS looks at factors such as 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 her affidavit, the petitioner stated that she was assaulted when she was working at a bakery. She stated that although the assailant had not physically hurt her, as a result of the robbery she had become nervous and fearful of strangers. The petitioner submitted affidavits from her employer, her friend, and her sister affirming that she had become nervous and fearful as a result of the robbery. Furthermore, the certifying official left blank Part 3.6, which asks for a description of any known or documented injury to the petitioner. On appeal, the petitioner states that she was "pushed" against the wall and hit [her] head very hard," that she believed the assailants "were armed," and that she was "afraid for [her] life."

Although we do not minimize what the petitioner experienced as a result of the robbery, the petitioner has submitted insufficient evidence to demonstrate that she has suffered resultant substantial physical or mental abuse. For this additional reason, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner failed to establish by a preponderance of evidence that she was the victim of a qualifying crime or criminal activity. In consequence of her failure to establish that she 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)(I) – (IV) of the Act. Furthermore, the petitioner is inadmissible to the United States and her grounds of inadmissibility have not been waived. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

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); *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. The petition remains denied.