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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

[Redacted]

Date: **APR 13 2015** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: PETITIONER: [Redacted]

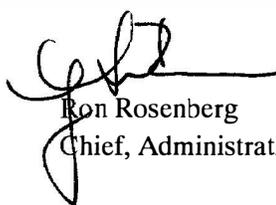
PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:
[Redacted]

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 failed to establish that he had suffered substantial physical or mental abuse as a result of his victimization. On appeal, the petitioner asserts on his Form I-290B, Notice of Appeal, that the director incorrectly denied his 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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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As used in section 101(a)(15)(U)(i)(I) of the Act, 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 Guatemala who initially entered the United States on March 2, 1999, without inspection, admission or parole. On March 12, 1999, an immigration judge ordered the petitioner removed from the United States, and on April 7, 1999, he was removed. The petitioner claims that he reentered the United States in March, 2001, without inspection, admission or parole.

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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 September 14, 2012. On the same day, the petitioner filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) in order to waive his grounds of inadmissibility. On September 26, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial mental or physical abuse as a result of the qualifying crime. 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 appealed the denial of the Form I-918 U petition. The petitioner states on appeal that although the police reports do not fully describe his injuries, he was physically assaulted and he submitted sufficient evidence establishing that he suffered substantial physical and mental abuse as a result of qualifying criminal activity.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Commanding Officer, [REDACTED] California, Police Department (certifying official), on March 8, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as robbery. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211, robbery, 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 stated that during the first incident on December 22, 2007, an armed suspect demanded property from the petitioner and during the second incident on February 4, 2008, the suspect "appeared to be armed and demanded" property from the petitioner. At Part 3.6, the certifying official indicated that no injuries were reported.

In his declaration submitted in support of the Form I-918 U petition, the petitioner states that he has been a victim of multiple robberies and has suffered physically and psychologically. He has been punched and hit with baseball bats, and during the most recent robbery, the suspects hit the petitioner in the neck and chased him down the street. About a week after the last robbery, the police caught the suspects and the petitioner was able to identify them. When the petitioner testified against the suspects in court, he felt threatened by their family members. He continues to have problems sleeping, he has nightmares, and he does not feel safe anywhere.

In the investigative report from the [REDACTED] Police Department dated December 22, 2007, the investigating officer reported that two suspects approached the petitioner, produced a handgun and an iron pipe, and demanded money. The petitioner gave the suspects money, and the suspects fled. In the investigative report from the [REDACTED] Police Department dated February 4, 2008, the investigating officer reported that after the petitioner purchased two bags of recyclables from the suspect, the suspect put his hand in the rear of his waistband and demanded more money. The petitioner "believed" the suspect was armed, so he gave the suspect more money, and the suspect fled.

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Section 101(a)(15)(U)(i)(I) of the Act specifies that substantial abuse must be a consequence of the victimization (“[h]as suffered substantial physical or mental abuse *as a result of having been a victim* of criminal activity described in clause (iii)[.]” (Emphasis added). Factors relevant to a determination of substantial abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. See 8 C.F.R. § 214.14(b)(1)

Although the petitioner claims that he is suffering from insomnia, nightmares, and is afraid to go outside, the investigative reports and the petitioner’s statement lack the details necessary to demonstrate that his victimization resulted in serious impairment to his appearance, health, or physical or mental soundness. The record does not show that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse. The petitioner’s statement indicates that he suffered traumatic experiences during the multiple robberies against him, but the impact of the crimes on the petitioner’s mental health is not sufficiently detailed in the record such that we can conclude that he suffered substantial mental abuse. Moreover, the investigative reports that correspond to the certified incidents and Form I-918 Supplement B do not indicate that the petitioner suffered any injuries during the robberies or that his assailants physically harmed him in any way.¹ While we do not minimize the petitioner’s victimization, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Under the relevant factors described at 8 C.F.R. § 214.14(b)(1), the evidence in the record does not demonstrate that the petitioner suffered substantial abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.

Qualifying Criminal Activity

In addition, although not raised by the director in the denial decision, even if the petitioner had established that he had suffered resultant substantial physical or mental abuse, his request for U nonimmigrant status would not be approvable because he has failed to establish that he was the victim of a qualifying crime or criminal activity, which renders him statutorily ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.²

The Form I-918 Supplement B and investigative reports 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.

¹ In his declaration, the petitioner also claims that he has physical ailments from blows robbers have given him. However, there is no evidence that any such harm occurred during the certified incidents of robbery that occurred on December 22, 2007, or February 4, 2008, and as such are not relevant to his petition.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

The petitioner has not demonstrated that the nature and elements of the criminal offense of which he 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.

The record contains no evidence that the certifying official or any other law enforcement entity investigated a qualifying crime. The investigative reports indicate that the petitioner was a victim of robbery. The petitioner claims that the robberies were traumatic and he is still suffering psychologically. 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). As the petitioner has not established that robbery under Cal. Penal Code § 211 is substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act, and as the Form I-918 Supplement B fails to indicate that qualifying criminal activity was investigated or prosecuted, the petitioner cannot establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

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.