

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

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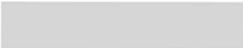


Date: **APR 14 2015**

Office: VERMONT SERVICE CENTER

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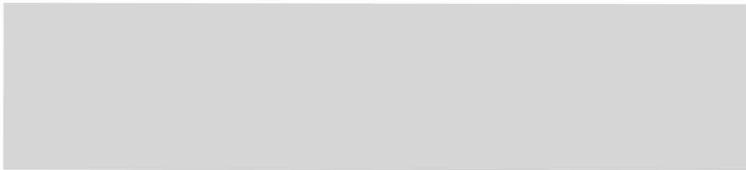
IN RE:

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:

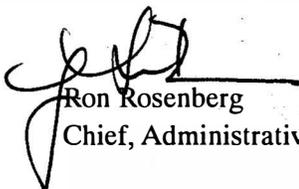


INSTRUCTIONS:

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 failed to meet the eligibility criteria at sections 101(a)(15)(U)(i)(I) – (III) of the Act (substantial physical or mental abuse, possession of information, and helpfulness to law enforcement) because he was not the victim of a qualifying crime. On appeal, the petitioner submits a brief.

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[.]¹

The regulation governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) defines, in pertinent part:

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(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 explained 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

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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 Mexico who claims he entered the United States in June of 2005 without being inspected, admitted, or paroled. 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 30, 2011. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. The director subsequently issued a Request for Evidence (RFE) requesting that the petitioner establish, among other things, that he was the direct or indirect victim of qualifying criminal activity: The petitioner submitted a brief and additional evidence in response to the RFE 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. On appeal, the petitioner claims that he meets the definition of "victim" under the Act as well as the other eligibility requirements for relief.

Claimed Criminal Activity

In his declaration, the petitioner recounted that on April 22, 2011, he was at a gas station when a woman asked him for a ride. After several repeated requests, the petitioner agreed and let her into his car. The petitioner stated that a man jumped onto the hood of his car and began yelling at the woman, demanding that she get out of the car. According to the petitioner, he told both of them to get out of and off of his car, but they refused. The petitioner described the man taking off one, and then both, of the car's windshield wipers and using them to hit his windshield which began to break. He stated he called 911 and began to slowly drive, telling the operator that he would not stop the car because he did not know if the man on top of his car had a weapon and he was afraid his life was at risk. The petitioner described seeing a police car approach and he began to honk his horn. The petitioner reported that the officers arrested the man who was on top of his car as well as the woman in his car, but when he opened his car door, a police officer began to hit him, threw him to the ground, and handcuffed him. He stated that after answering some questions, he was permitted to leave.

The Form I-918 Supplement B that the petitioner submitted was signed by [redacted] of the [redacted] Texas, Police Department (certifying official) on [redacted] 2011.² 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 Texas Penal Code sections 15.01, 22.02, and 22.07 (criminal attempt, aggravated assault, and terroristic threat, respectively) as the statutory citations for 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 indicated that the petitioner "was threatened and

² The record contains a letter from [redacted] Chief of Police, [redacted] Police Department, specifically designating and authorizing [redacted] to sign the Form I-918 Supplement B.

assaulted by [the perpetrator] while [the petitioner] was peacefully driving his car. [The perpetrator] jumped on the hood of [the petitioner's] car and started beating the front window glass shield to the car with the intent of breaking the glass and causing serious bodily injury to [the petitioner]. [The petitioner] was placed in fear of his life." At Part 3.6, which asks the certifying official to describe any injury to the victim, he stated that the petitioner "was placed in fear of his life when [the perpetrator] jumped on [the petitioner's] car and attempted to break the windshield glass."

The police report in the record described the events as the petitioner had recounted with the exception that the report does not indicate that the petitioner was ever hit by a police officer. In addition, the police report stated that the man on the hood of the car and the woman in the petitioner's car were a common-law couple, and that the man threatened to violently assault and kill the woman. The report stated that the man was arrested for "terroristic threats – family" and for criminal damage to the petitioner's car, and that no one was injured in the matter.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw, in part, and affirm, in part, the director's decision.

Victim of Qualifying Criminal Activity

The director's decision found that the police report indicated that the primary offense was terroristic threat of family/household and that, although the woman in the petitioner's car was threatened by the perpetrator, the petitioner himself was not directly threatened or assaulted. Therefore, the director concluded that the petitioner was not the victim of a qualifying crime and failed to meet the additional eligibility criteria. However, the preponderance of the evidence submitted establishes that the petitioner was a direct victim of the qualifying crime.

The Form I-918 Supplement B listed felonious assault and cited Texas Penal Code section 22.02, aggravated assault, as the crime the certifying agency investigated or prosecuted. Section 22.02 of the Texas Penal Code states, in pertinent part:

(a) A person commits an offense if the person commits assault as defined in § 22.01 and the person:

- (1) causes serious bodily injury to another, including the person's spouse; or
- (2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony

The Form I-918 Supplement B and other evidence establishes that the crime of aggravated assault, a felony in Texas, was investigated. TEX. PENAL CODE ANN. § 22.02(b). Felonious assault is a qualifying crime under section 101(a)(15)(U)(iii) of the Act. Therefore, the record shows a qualifying crime was investigated.

In addition, the record shows that the petitioner was a victim under the regulation at 8 C.F.R. § 214.14(a)(14) because he suffered direct and proximate harm as a result of the qualifying crime. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). See *U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence." *Id.* at 9.

In this case, as the police report indicated, the man who was on the hood of the petitioner's car "violently pursued the matter by intentionally attaching himself to the hood of the vehicle . . . , breaking the windshield and windshield wipers with his fists while continuously issuing threats." The vehicle referred to was owned by the petitioner who was also driving the vehicle at the time the incident occurred. The perpetrator broke off the windshield wipers so as to have an implement to hit the windshield; had the windshield shattered, the glass would have fallen on both occupants of the vehicle. In addition, it is unclear what the perpetrator would have done had he been able to access the vehicle's occupants. The police report characterized the perpetrator as "agitated and combative" and states that the perpetrator was yelling at both occupants of the vehicle.

The petitioner was placed in danger of direct and proximate harm as a result of the perpetrator's actions and, as a result, he was a direct victim of the perpetrator's attempted assault. Accordingly, we withdraw that portion of the director's decision finding otherwise.

Helpfulness

Here, nothing in the record indicates that the petitioner refused or failed to provide information or assistance reasonably requested by the [REDACTED] Police Department at any point after he commenced her cooperation in its investigation of the qualifying criminal activity. To the contrary, the certifying official specified on the Form I-918 Supplement B that the petitioner was helpful in the investigation and prosecution of the criminal activity perpetrated against him and that he did not unreasonably refuse to provide assistance in the investigation or prosecution. The director's decision that the petitioner was not helpful in the prosecution of the certified criminal activity rested upon the conclusion that the petitioner was not the victim of qualifying criminal activity. As stated above, the petitioner was a victim of qualifying criminal activity, and the evidence of record demonstrates that the petitioner satisfied the helpfulness requirement imposed by regulation and statute to provide continuing assistance in the investigation or prosecution of qualifying criminal activity, when reasonably requested. We therefore withdraw the director's determination to the contrary.

Substantial Physical or Mental Abuse

Although we have withdrawn two of the stated grounds for denial, the petition may not be approved because the third denial ground has not been overcome.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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 his declaration, the petitioner states that he gets "agitated and fearful" when he thinks about the incident and he is scared that he will experience something similar in the future. The petitioner submitted a psychological report from [REDACTED] doctor of psychology, who diagnosed the petitioner with Major Depressive Disorder, Generalized Anxiety Disorder, and Posttraumatic Stress Disorder as a result of the incident. According to the psychological report, the petitioner continues to experience insomnia, excessive worry, difficulty concentrating, nightmares, and flashbacks of the incident. The petitioner himself, however, did not describe or mention any of these continuing symptoms in his personal declarations.

On appeal, the petitioner states that Dr. [REDACTED] report diagnoses the petitioner with mental health issues resulting from the incident and that while her report may note the police action, the petitioner's mental health issues stem from a larger fear of being subjected to another random act of violence. However, although Dr. [REDACTED] report contains a description of the incident, the "lingering aftermath" section states that the petitioner "does not understand why the police attacked him. He . . . becomes agitated and fearful when he remembers. He remains afraid that something like this could happen again." She also noted the petitioner's fear of the police in the assessment section of her report, stating that as a result of the incident, the petitioner now fears the police and struggles to overcome the feeling of helplessness he experienced "while the police officers beat him." In fact, the only specifics contained in Dr. [REDACTED] report concern the petitioner's interaction with the police; outside of the preliminary factual statement, she does not refer to the perpetrator. In addition, the report does not ascribe any psychological, mental, or emotional trauma to the perpetrator's actions, noting only the petitioner's reaction to the actions of the police. As noted earlier in this decision, the police report does not indicate that the petitioner was ever hit by a police officer.

The petitioner also asserts that any fear of the police or mental health issues stemming from the actions of the police should be considered as part of the criminal activity as a whole since if the perpetrator had never jumped on the petitioner's car, the petitioner would not have needed to call the police. However, subsection 101(a)(15)(U)(i)(I) of the Act provides that the substantial abuse must result from qualifying criminal activity described at section 101(a)(15)(U)(iii) of the Act. Again, the police report does not indicate that the petitioner was ever hit by a police officer, and is not the certified qualifying criminal activity.

Ultimately, the preponderance of the relevant evidence in this case does not show that the petitioner has suffered substantial physical or mental abuse as the result of his victimization under the factors and standard explicated in the regulation at 8 C.F.R. § 214.14(b)(1). At Part 3.6 of the Form I-918 Supplement B, the

certifying official did not indicate that the petitioner suffered any physical injury, but that he “was placed in fear of his life” when the perpetrator jumped on his car and attempted to break the windshield. Neither the Form I-918 Supplement B or the petitioner’s declaration indicates that he suffered any physical injury as a result of the incident. The petitioner’s declaration and the psychological report discuss in general terms the petitioner’s anxiety, depression and posttraumatic stress disorder, but the petitioner includes no details about the mental harm suffered as a result of the incident and Dr. [REDACTED] report does not sufficiently describe any connection between the mental health issues and the perpetrator’s actions, as opposed to attributing any mental health issues to the actions of the police. Consequently, as the record is presently constituted, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act, which requires him to demonstrate that he suffered substantial abuse resulting from qualifying criminal activity.

Conclusion

The petitioner has established that he was the victim of a qualifying crime, namely felonious assault, and that he was helpful to law enforcement regarding a qualifying crime. As a result, those portions of the director’s decision are withdrawn. The petitioner remains ineligible for U nonimmigrant classification under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), however, as the record does not establish that he suffered resultant substantial physical or mental abuse as required under subsection 101(a)(15)(U)(i)(I) of the Act.

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 director’s January 10, 2013, decision is withdrawn in part and affirmed in part. The appeal is dismissed. The petition remains denied.