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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 07 2015**

[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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 record did not establish that the petitioner was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, possesses information concerning the qualifying criminal activity, has been helpful to authorities investigating or prosecuting qualifying criminal activity and that the qualifying crime took place within the jurisdiction of the United States. 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:

(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;

* * *

Neither robbery nor assault are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

According to the regulation at 8 C.F.R. § 214.14(a)(9), 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.” (Emphasis added).

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. . . .
- (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. . . .
- (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
- (4) The qualifying criminal activity occurred in the United States

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 Mexico who claims to have last entered the United States on March 7, 1999, without admission, inspection or parole. 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 10, 2013. The director subsequently issued a Request for Evidence (RFE) seeking to obtain evidence 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 petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, the petitioner asserts that he was a victim of robbery and felonious assault, and that robbery is substantially similar to felonious assault, a qualifying crime.

Claimed Criminal Activity

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the RFE. The initial Form I-918 Supplement B filing was signed by [REDACTED] Chief, [REDACTED] Police Department, [REDACTED] Minnesota on May 24, 2013. Chief [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as assault/robbery. In Part 3.3, Chief [REDACTED] listed the statutory citation for the criminal activity that was investigated or prosecuted as Minnesota Statute 609-24 (simple robbery), and at Part 3.5, which requests the certifying official to describe the criminal activity being investigated and prosecuted, stated that the petitioner "was assaulted by three individuals on the bus on or about April 30, 2013. The three suspects took [the petitioner's] phone and escaped from the bus. The police [are] investigating the crime." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, Chief [REDACTED] indicated that "[o]ne of the suspects punched [the petitioner] on the left side of his jaw." At Part 4.5, Chief [REDACTED] stated that the petitioner cooperated with the investigation.

The second Form I-918 Supplement B submitted in response to the RFE was dated July 15, 2014 and signed by Lieutenant [REDACTED] Investigations Unit, [REDACTED] Police Department, [REDACTED] Minnesota. At Part 3.1, Lt. [REDACTED] listed felonious assault and robbery as the criminal activity of which the petitioner was a victim. At Part 3.3, Lt. [REDACTED] listed the statutory citation that was investigated or prosecuted as Minnesota Statute 609-24 (simple robbery), as did Chief [REDACTED]. At Part 3.5, Lt. [REDACTED] certification was similar to Chief [REDACTED] except that Lt. [REDACTED] additionally referred to the "attached report"¹ describing the criminal activity being investigated or prosecuted, which included a statement that the bus driver did not witness the crime, and a supplemental report. The latter notes that a [REDACTED] officer reviewed a video of the incident from security cameras and stated that two men took the telephone out of the victim's hand, while a third was at the door. There was no video footage of a punch to the jaw. Lt. [REDACTED] certification also differed from Chief [REDACTED] in that it indicated at Part 3.6, that the petitioner sustained a jaw injury.² Lt. [REDACTED] did not indicate that the petitioner was helpful in the investigation or prosecution of the crime at Part 4.5.

¹ The only report in the record is the incident report with entries dated from April 30, 2013 up to and including the supplemental report dated May 6, 2013.

² The petitioner's emergency medical records did not describe any injury to the petitioner.

Lt. [REDACTED] indication at Part 3.1, that the petitioner was the victim of a felonious assault is not supported by the record. 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.³ Lt. [REDACTED] did not explain why he changed the crime against the petitioner in Part 3.1 to include felonious assault, or what new evidence in the record was different from that considered by Chief [REDACTED]. The certified crime at Part 3.3 on both Forms I-918 Supplement B is Minnesota Statute § 609-24 (simple robbery). The incident and supplemental reports noted that simple robbery of a cellular telephone was the criminal activity that was investigated or prosecuted, that there was no witness to any assault, and that the video did not show any assault. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the petitioner and neither of the certifying officials explained why at Part 3.3, he provided a citation for simple robbery, not felonious assault under Minnesota law, if a felonious assault against the petitioner was actually investigated or prosecuted.

On appeal, the petitioner claims that both Forms I-918 Supplement B indicate that he was assaulted when he was punched in the face. While both Forms I-918 Supplement B indicate that the petitioner reported an assault and an injury from the assault, neither certifying official identified which specific subsection, if any, of the Minnesota assault statute was investigated or prosecuted.⁴ Even if we were to consider that the crime of simple assault was investigated or prosecuted, misdemeanor assault is not substantially similar to felonious assault in Minnesota, as simple assault 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 any assault crime which may have been investigated was substantially similar to felonious assault.

Analysis

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

Robbery under Minnesota Law is not Qualifying Criminal Activity

Both Forms I-918 Supplement B and the incident report from the [REDACTED] Police Department indicate that robbery was the criminal activity that was investigated. The crime of

³ We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

⁴ Simple assault is defined at Minnesota Statute § 609.224 as either "an act 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." See MINN. STAT. ANN. 609.224 (West 2015). For an assault to be considered a felony, it must involve serious or substantial bodily injury and/or use of a dangerous weapon or be committed against a protected individual. See MINN. STAT. ANN. §§ 609.221-223 and 609.2231 (West 2015).

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.

Under Minnesota law, simple robbery is defined as follows:

Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

See MINN. STAT ANN. § 609.24 (West 2012). For an assault to be considered a felony, it must involve serious or substantial bodily injury and/or use of a dangerous weapon or be committed against a protected individual. *See* MINN. STAT ANN. §§ 609.221-223 and 609.2231.

No elements of simple robbery under Minnesota Statute § 609.24 are similar to felonious assault under Minnesota Statutes §§ 609.221-223 and 609.2231. The statute investigated in this case involves taking personal property from an individual through the use of force or the threatened use of force, and does not require serious bodily injury and/or the use of a dangerous weapon as a necessary component, or that the crime be committed against a protected individual.

The petitioner has not demonstrated that the nature and elements of Minnesota robbery are substantially similar to the elements of felonious assault at MINN. STAT ANN. §§ 609.221-223 and 609.2231 or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner has not established that he was the victim of qualifying criminal activity, he has also not established that he 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. Accordingly, we shall not further address this issue.

Possession of Information Concerning Qualifying Criminal Activity

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that he possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that he has been, is being or is likely to be helpful to a federal, state, or local law enforcement official, prosecutor, federal or state judge, 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 of Qualifying Criminal Activity

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

The petitioner has not demonstrated that he was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. Accordingly, he has not demonstrated that he meets the remaining eligibility requirements for U nonimmigrant status. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility). 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.