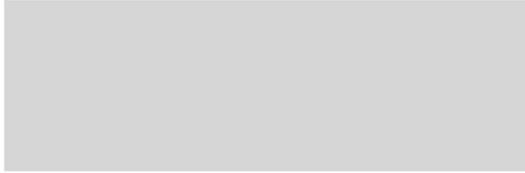




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 11 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [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:



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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), finding that the petitioner did not establish that she was a victim of qualifying criminal activity, and therefore could not demonstrate her eligibility for the remaining statutory requirements. 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 labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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 burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Ecuador who claims to have last entered the United States on July 4, 2002 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on June 12, 2013. The director issued a request for evidence (RFE) that the petitioner was the victim of qualifying criminal activity and suffered substantial physical or mental abuse as a result. The petitioner responded to the RFE with a brief and additional evidence. The director found the evidence insufficient to establish that the petitioner was the victim of qualifying criminal activity, and therefore found that she could not meet the remaining statutory requirements. The director denied the petition and the petitioner filed a timely appeal.

Certified Criminal Activity

The Form I-918 Supplement B was signed on April 19, 2013 by [REDACTED] Commander of the Criminal Investigations Division, [REDACTED] Police Department, [REDACTED] Minnesota (certifying official). At Part 3.1 of the Form I-918 Supplement B, the certifying official listed the criminal activity of which the petitioner was a victim as “Related Crimes” and “Other: Robbery of person.” At Part 3.3, the certifying official cited Minn. Stat. Ann. § 609.24, which corresponds to simple robbery, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. The certifying official stated at Part 3.5 that the petitioner “was walking home when she was robbed and assaulted by suspects.”

Qualifying Criminal Activity

The relevant evidence submitted below and on appeal does not establish that the petitioner was a victim of a qualifying crime or criminal activity. The crime listed on the Form I-918 Supplement B, simple 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 simple robbery must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

In her brief on appeal, the petitioner argues that simple robbery under Minn. Stat. Ann. § 609.24 is substantially similar to aggravated robbery under Minn. Stat. Ann. § 609.245 and assault in the third degree under Minn. Stat. Ann. § 609.223, which in turn are substantially similar to felonious assault, a qualifying crime. The director found that aggravated robbery Minn. Stat. Ann. § 609.245 is substantially similar to felonious assault. However, the director concluded that the crime investigated in the petitioner’s case, simple robbery, is not substantially similar to aggravated robbery or felonious assault. The evidence does not demonstrate that the director’s conclusion was in error.

Minnesota law provides the following definition of simple robbery:

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

Minn. Stat. Ann. § 609.24 (West 2015).

Aggravated robbery in Minnesota is as follows:

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 or to payment of a fine of not more than \$35,000, or both.

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 or to payment of a fine of not more than \$30,000, or both.

Minn. Stat. Ann. § 609.245 (West 2015).

Minnesota law provides, in pertinent part, the following regarding assault in the third degree:

Subdivision 1. Substantial bodily harm. Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Minn. Stat. Ann. § 609.223 (West 2015).

The nature and elements of simple robbery under Minn. Stat. Ann. § 609.24 are not substantially similar to aggravated robbery under Minn. Stat. Ann. § 609.245. Simple robbery involves the taking of the property of another through force or the threat of force. By contrast, aggravated robbery requires commission of a robbery while armed with a dangerous weapon, causing the victim to believe that the perpetrator is armed with a dangerous weapon, or inflicting bodily harm upon another. Simple robbery can be achieved by force or threat of force, and does not include the element of a dangerous weapon or bodily harm against another person. Therefore, the nature and elements of these two statutes are not substantially similar.

Similarly, the nature and elements of simple robbery under Minn. Stat. Ann. § 609.24 are not substantially similar to assault in the third degree under Minn. Stat. Ann. § 609.223. As discussed, simple robbery involves the taking of the property of another through force or threat of force. Assault in the third degree does not involve the taking of the property of another. Instead, it involves assault against another person and infliction of substantial bodily harm, which simple robbery does not require. These two crimes do not share any similar elements.

Although the petitioner argues that she was the victim of aggravated robbery and assault in the third degree because she suffered bodily harm as a result of being robbed, 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 that was investigated with a qualifying crime. See 8 C.F.R. § 214.14(a)(9). There is no evidence in the record that aggravated robbery or assault in the third degree were investigated in relation to the petitioner.

The petitioner has not demonstrated that the nature and elements of the crime of simple robbery investigated in her case, Minn. Stat. Ann. § 609.24, as certified on the Form I-918 Supplement B, are substantially similar to aggravated robbery, assault in the third degree, felonious assault, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner has not shown that she is a victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act.

Conclusion

The petitioner has not established that she was the victim of a qualifying crime or criminal activity. Therefore, she has not demonstrated that she can satisfy any of the criteria for nonimmigrant classification at section 101(a)(15)(U)(i)(I)-(IV) of the Act.

(b)(6)



NON-PRECEDENT DECISION

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As in all visa petition proceedings, the petitioner bears the burden of proving 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). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.