



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-S-S-

DATE: DEC. 14, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. 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 theft 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.”

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of India who entered the United States on April 3, 2005, as a nonimmigrant visitor. The Petitioner filed the Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on October 4, 2013. On July 22, 2014, the Director issued a request for evidence (RFE) that the Petitioner was a

(b)(6)

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victim of a qualifying crime. In response, the Petitioner submitted a statement claiming that he was a victim of qualifying criminal activity, which the Director found insufficient to establish the Petitioner's eligibility.

The Director denied the petition as the record did not establish that the Petitioner was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, possessed information regarding qualifying criminal activity, was helpful in the investigation or prosecution of qualifying criminal activity, and that any qualifying activity occurred within the jurisdiction of the United States. The Petitioner timely appealed the denial. On appeal, the Petitioner submits a brief and claims that he was a victim of a qualifying crime.

III. 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.

A. Certified Criminal Activity

The Form I-918 Supplement B submitted into the record was signed by [REDACTED] Assistant Prosecutor, [REDACTED] Prosecutor's Office, [REDACTED], New Jersey (certifying official), on August 2, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as robbery/theft and provided at Part 3.2 the date the criminal activity occurred as [REDACTED] 2008. In Part 3.3, the certifying official referred to New Jersey Penal Code §§ 2C:15-1(a) (robbery) and 2C:20-3(a) (theft), as the criminal activity that was investigated or prosecuted.

B. Robbery under New Jersey law is not Qualifying Criminal Activity

The Form I-918 Supplement B and [REDACTED] Police Case Report (police report) indicate that robbery (strong arm) (no weapon) and theft were investigated. The crimes of theft and robbery are not specifically listed as qualifying crimes 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). As the Petitioner does not assert, and we do not find, that theft is substantially similar to any qualifying crime, we will not address the statutory charge of theft in this decision.¹ 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 statute in question.

¹ Under New Jersey law, a person is guilty of theft "if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." N.J. Stat. Ann. 2C:20-3(a) (West 2008).

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New Jersey law provides that a person is guilty of robbery if, in the course of committing a theft, he:

- (1) Inflicts bodily injury² or uses force upon another; or
- (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
- (3) Commits or threatens immediately to commit any crime of the first or second degree.

N.J. Stat. Ann. § 2C:15-1(a) (West 2008).

The Petitioner asserted below that he was a victim of felonious assault (aggravated assault). Simple assault in New Jersey provides that a person commits simple assault who “attempts to, or causes bodily injury to another, or attempts to . . . put another in fear of imminent serious bodily injury.” N.J. Stat. Ann. 2C:12-1(a) (West 2008). In order to constitute an aggravated assault, the assault must be accompanied by an attempt to cause serious bodily injury³ to another, or cause such injury purposely, knowingly or recklessly, or involve an aggravating factor, such as assault with a deadly weapon or firearm, or assault against a specific class of persons (such as law enforcement officers, fire fighters, custodial officers and school employees). N.J. Stat. Ann. §§ 2C:12-1(b).

No elements of robbery under N.J. Stat. Ann. § 2C:15-1(a) (West 2008) are similar to aggravated assault under N.J. Stat. Ann. 2C:12-1(b) (West 2008). The robbery statute investigated in this case involves taking personal property from an individual while inflicting or threatening bodily injury. Aggravated assault in New Jersey, on the other hand, involves the attempt to cause, or causing, serious bodily injury, the use of a deadly weapon, firearm, or simple assault against a protected class as a necessary component. The certifying official’s indication at Parts 3.1 and 3.3 of the Form I-918 Supplement B, and the police report, noted that the crime investigated was robbery. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the Petitioner. We recognize that qualifying criminal activity may occur during the commission of a non-qualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that the crime of felonious assault was investigated or prosecuted.

On appeal, the Petitioner submits a copy of an electronic court record indicating that [REDACTED], one of the perpetrators involved in the robbery, was indicted for violating N.J. Stat. Ann. 2C:15-1(a)(2) (robbery-threat) in the first degree. He cites to New Jersey case law, which provides that second degree robbery is theft attended by a simple assault and first degree robbery as theft attended by aggravated assault. He asserts that as aggravated assault is a lesser included offense of first degree robbery, we must find that the Petitioner was a victim of aggravated assault. The court record, however, does not indicate the date of the offense or establish that the indictment was for the

² Bodily injury means “physical pain, illness or any impairment of physical condition.” N.J. Stat. Ann. § 2C:11-1(a) (West 2008).

³ Serious bodily injury means “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” N.J. Stat. Ann. § 2C:11-1(b) (West 2008).

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criminal activity at issue in this case.⁴ As discussed, the standard for inclusion as a qualifying criminal activity is that the crime investigated or prosecuted is “substantially similar” to one of the enumerated crimes, and 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). The Petitioner has not demonstrated that the nature and elements of the criminal activity investigated in this case, robbery under N.J. Stat. Ann. § 2C:15-1(a), are substantially similar to felonious assault, 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.

C. Substantial Physical or Mental Abuse

As the Petitioner did not establish 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.

D. Possession of Information Concerning Qualifying Criminal Activity

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

E. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying 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, USCIS 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.

F. Jurisdiction

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that 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, as required by section 101(a)(15)(U)(i)(IV) of the Act.

⁴ The police report indicates that the same perpetrators were involved in robbery offenses in [REDACTED] and a theft of services offense from a [REDACTED] station.

IV. CONCLUSION

The Petitioner has not established that he was the victim of a qualifying crime, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-S-*, ID# 14749 (AAO Dec. 14, 2015)