



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

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

MATTER OF G-B-C-

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

Felonious assault is listed as qualifying criminal activity 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 Mexico who claims to have last entered the United States in February 2004 without inspection, admission or parole. 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 November 19, 2013. On September 11, 2014, the Director issued a request

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for evidence (RFE) that the Petitioner was a victim of a qualifying crime and that she had suffered substantial abuse as a result of such crime. The Petitioner responded with additional evidence, 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 she 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.

A. Certified Criminal Activity

The Form I-918 Supplement B submitted into the record was signed by [REDACTED] Sheriff's Department, [REDACTED] California, (certifying official), on May 22, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and provided at Part 3.2 the date the criminal activity occurred as [REDACTED] 2011. In Part 3.3, the certifying official referred to Cal. Pen. Code § 211 (robbery), as the criminal activity that was investigated or prosecuted.

B. Robbery under California Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and incident report from the [REDACTED] County Sheriff's Department indicate that robbery (strong arm) 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.

Under the California Penal Code, "[r]obbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." Cal. Penal Code § 211 (West 2011). California law defines assault "as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." Cal. Penal Code § 240 (West 2011). Felonious assault in California involves an aggravating factor such as assault with a deadly weapon or force likely to produce great bodily injury, assault with caustic chemicals or flammable substances, or assault against a specific class of

persons (such as peace officers, fire fighters, custodial officers or school employees). Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2011).

The certifying official's indication at Part 3.1 that the Petitioner was the victim of a felonious assault is without support in the record. The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the incident report noted that the crime was robbery. No elements of robbery under Cal. Penal Code § 211 are similar to felonious assault under Cal. Penal Code §§ 244, 244.5, 245, 245.3, or 245.5. The statute investigated in this case involves taking personal property from an individual through the use of force or fear, and does not require violent or great bodily injury, the use of a weapon or caustic/flammables substances, or assault against a protected class as a necessary component. Felonious assault in California involves an attempt, with a present ability, to commit violent injury upon another with an aggravating factor such as those listed above. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the Petitioner, and the certifying official does not explain why at Part 3.3 he provided a citation for robbery, not felonious assault under California law, if a felonious assault against the Petitioner was actually investigated or prosecuted.¹ 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. Here, the evidence of record does not demonstrate that the crime of felonious assault was investigated or prosecuted.

On appeal, the Petitioner claims that she was violently assaulted with a force likely to produce great bodily injury, and as such, that she was a victim of felonious assault. She asserts that felonious assault is contained within the definition of robbery, in that robbery is a felony and assault is a basic element of robbery. However, as stated above, 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 provided the requisite statutory analysis to demonstrate that the nature and elements of Cal. Penal Code § 211 (robbery) are substantially similar to Cal. Penal Code §§ 244, 244.5, 245, 245.3, or 245.5 (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 she was the victim of qualifying criminal activity, she has also not established that she 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.

¹ 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).

D. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also not established that she 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 she was the victim of qualifying criminal activity, she has also not established that she 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 she was the victim of qualifying criminal activity, she 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.

IV. CONCLUSION

The Petitioner has not established that she was the victim of a qualifying crime, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. Accordingly, she has not demonstrated that she 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 G-B-C-*, ID# 14724 (AAO Dec. 14, 2015)