



U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-L-M-

DATE: DEC. 16, 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 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: . . murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(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.

- (i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age of the victim at the time the qualifying criminal activity occurred.

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Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence*. Form I-918 must include the following initial evidence:

- (i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: . . . the [petitioner] has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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

(b)(6)

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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 Guatemala who entered the United States without inspection, admission, or parole in April 2013. On June 16, 2014, the Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. She also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive her grounds of inadmissibility. The Director issued a request for evidence (RFE) that the Petitioner is a victim of qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for U nonimmigrant status. The Director denied the Form I-918 and the accompanying Form I-192. The Petitioner timely appealed the denial of the Form I-918.

## III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief on appeal, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Lieutenant-Crimes Against Persons, [REDACTED] (certifying official), on April 30, 2014. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and "battery" in the space indicating "other." In Part 3.3, the certifying official referred to robbery under section 29.01 of the Texas Penal Code (TPC) as 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 at the apartment laundry room when two suspects approached from behind and pushed victim to the ground. One suspect reached into victims [sic] pocket and took her phone and \$250.00 cash."<sup>1</sup> At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the victim "was knocked down causing her to receive cuts to her forehead, bruising to her face and a busted lip. [Petitioner] has been traumatized by this crime and has had difficulty adjusting. [Petitioner] is going to counseling." The certifying official further stated in Part 4 that the Petitioner was cooperative throughout the investigative process.

The Form I-918 Supplement B and the Dallas Police Department Report indicate that robbery 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

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<sup>1</sup> The Form I-918 Supplement B and the police report indicate that the Petitioner was attacked in the apartment laundry room while the Petitioner indicates in her affidavit that she was attacked when returning to her apartment from the store and her crisis counselor indicates in her letter that the Petitioner reported that she was attacked coming home from the store.

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 Texas robbery offense, section 29.01 of the TPC, 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.

Under section 29.01 of the TPC, the cited statute in the Form I-918 Supplement B, “‘in the course of committing theft’ means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft” and property means “(A) tangible or intangible personal property including anything severed from land; or (B) a document, including money, that represents or embodies anything of value.” *See* Tex. Penal Code § 29.01 (West 2013). Under the Model Penal Code (MPC), “[a] person is guilty of aggravated assault if he: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.” Model Penal Code § 211.1(2) (West 2013). However, aggravated assault under the MPC requires, as an element of the offense, the presence of an additional aggravating factor, such as the infliction of a greater level of harm, such as serious bodily injury, to the victim or the use of a deadly weapon. Accordingly, in comparing the statutory elements of section 29.01 of the TPC and aggravated assault, we find that the offenses are not substantially similar. *See* 8 C.F.R. § 214.14(a)(9).

On appeal, the Petitioner asserts that the definition of robbery under the TPC encompasses the elements of aggravated assault under the MPC. The Petitioner also cites to a previous AAO decision which determined that section 29.02 of the TPC is substantially similar to aggravated felony under the MPC. Our non-precedent decisions apply existing law and policy to the facts of an individual case and do not create or modify USCIS policy or practice. In addition, the record does not demonstrate that felony robbery pursuant to section 29.02 of the TPC was investigated in the Petitioner’s case. The certifying official did not indicate that any other crimes were investigated or prosecuted on the Form I-918 Supplement B. The police report states that the offense committed was robbery, but does not indicate that felony robbery was investigated. The evidence in the record does not establish that the nature and elements of the criminal offense of which the Petitioner was a victim, robbery as defined under TPC section 29.01, are substantially similar to felonious assault under section 101(a)(15)(U)(iii) of the Act. Accordingly, the Petitioner has not established the requisite victimization under section 101(a)(15)(U)(i) of Act.

#### IV. CONCLUSION

In these visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also* *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of A-C-L-M-*, ID# 15118 (AAO Dec. 16, 2015)