



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

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

MATTER OF N-J-S-

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, 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[.]

....

(b)(6)

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(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. 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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of India, claims to have last entered the United States on March 12, 1996, without inspection, admission, or parole. He filed the Form I-918, Petition for U Nonimmigrant Status, on February 25, 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 replied 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 also found that the Petitioner could not establish eligibility under the elements of section 101(a)(15)(U)(i) of the Act. Accordingly, the Director denied the Form I-918. The Petitioner filed a timely appeal.

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 Form I-918.

A. Claimed Criminal Activity

The Petitioner submitted a Form I-918 Supplement B, signed by [REDACTED] Special Victim Unit, [REDACTED] California (certifying official). The

certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of felonious assault. At Part 3.3, the certifying official cited section 211 of the California Penal Code (CPC), which corresponds to robbery, as the relevant criminal statute for the criminal activity that was investigated or prosecuted. The certifying official instructed that we refer to the incident report for a description of the crime that was investigated or prosecuted and any injury to the Petitioner.

B. Robbery under California Law is not Qualifying Criminal Activity

The preponderance of the evidence does not establish that the Petitioner is the victim of a qualifying crime or criminal activity. 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 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 his brief on appeal, the Petitioner asserts that the nature and elements of robbery in violation of CPC § are substantially similar to felonious assault. He compares CPC § 211 with CPC § 240, which criminalizes assault, and CPC § 245, which criminalizes assault with a deadly weapon or force likely to produce great bodily injury, and asserts that the nature and elements of all three statutes are substantially similar. CPC § 211 (West 2012) provides, “[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.” CPC § 240 (West 2012) provides, “[a]n assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” CPC § 245 provides, in pertinent part:

(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished [by imprisonment or a fine]

. . . .

(4) Any person who commits an assault upon the person of another by means of force likely to produce great bodily injury shall be punished [by imprisonment or a fine]

(West 2012)

The Petitioner argues that robbery under CPC § 211 and assault under CPC §§ 240 and 245 are all “violent crimes against a person,” and all include fear as a required element. He concedes that assault under CPC §§ 240 and 245 does not include the taking of property, as robbery does, but asserts that “[t]he lack of a ‘taking’ element in the assault code is only a technical requirement in

robbery because under both codes there is an element of victimization, a violent crime against an individual” The Petitioner also asserts that assault with a deadly weapon is a lesser included offense of robbery. He describes the facts surrounding the crime of which he was a victim, asserting that two assailants punched him in the face and mouth, causing physical injury, and stole his cellular telephone, wallet, and driver’s license. The Petitioner also states that he was not assaulted with a deadly weapon, but was assaulted “by means of force likely to produce great bodily injury,” as described in CPC § 245.

The nature and elements of robbery under CPC § 211 are not substantially similar to assault under CPC § 240, or assault with a deadly weapon or force likely to produce great bodily injury under CPC § 245. Robbery requires the taking of property from a person through means of force or fear. Unlike assault under CPC § 240 and assault with a deadly weapon or force likely to produce great bodily injury under CPC § 245, robbery does not require an attempt to commit an injury on the victim. Additionally, as the Petitioner concedes, assault under CPC § 240 and assault with a deadly weapon or force likely to produce great bodily injury under CPC § 245 do not require a taking, while robbery does. The element of taking is not merely a technicality, as the Petitioner asserts, but a required element of the crime of robbery. Therefore, the nature and elements of the statutes are not substantially similar. Although acts which violate CPC §§ 211, 240, and 245 may all produce fear in some victims, and robbery may result in injury to victims in certain situations, 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).

Here, the record does not demonstrate that the nature and elements of the crime of robbery investigated in this case, under CPC § 211, are substantially similar to felonious assault under CPC §§ 240 and 245, or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. In addition, 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 at issue was robbery. 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 and not felonious assault under California law, if a felonious assault against the Petitioner was actually investigated or prosecuted. Therefore, the Petitioner has not demonstrated that he is the victim of qualifying criminal activity as required by subsection 101(a)(15)(U)(i)(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 subsection 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 subsection 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 subsection 101(a)(15)(U)(i)(IV) of the Act.

V. CONCLUSION

The Petitioner has not established that he was the victim of a qualifying crime or criminal activity, as required by sections 101(a)(15)(U)(i) and (iii) of the Act.

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.

Cite as *Matter of N-J-S-*, ID# 15285 (AAO Dec. 16, 2015)