



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

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

MATTER OF A-R-P-

DATE: DEC. 18, 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).]

.....

The eligibility requirements for U nonimmigrant classification are further explained 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 . . . :

(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.

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

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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 claims to have last entered the United States on June 15, 1998, without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on January 29, 2014. The Director issued a request for evidence (RFE) that the Petitioner was the victim of a 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, Application for Advance Permission to Enter as a Nonimmigrant. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner claims that he was a victim of a crime comparable to felonious assault, a qualifying crime.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner's brief on appeal, indicates that the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

The Form I-918, Supplement B initially submitted with the Petitioner's Form I-918 was signed by [REDACTED] Detective, [REDACTED] Police Department (certifying official) on October 12, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as "theft/robbery" in the space indicating "other." In Part 3.3, the certifying official referred to section 2C:20-3 of the New Jersey Statutes Annotated (NJSA). At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the [REDACTED] Police Department is investigating "a theft/robbery of money (\$13,952.00)" from the Petitioner. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official left the space blank. The certifying official stated in Part 4 that the Petitioner "is needed and is essential" for an ongoing case. The Petitioner also submitted an Investigation Report from the Police Department of [REDACTED] New Jersey which indicated that theft under section 2C:20-3 of the NJSA is the crime investigated.

Theft 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

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are substantially similar to the statutorily enumerated list of criminal activities.” See 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the New Jersey theft offense 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 2C:20-3 of the NJSA, a person commits theft when he or she “unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof” or “unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.” See N.J. Stat. Ann. § 2C:20-3 (West 2011). The Petitioner did not provide the requisite statutory analysis to demonstrate the claimed similarities between theft and one of the enumerated offenses. Instead, the Petitioner initially asserted in the January 27, 2014, cover letter from his counsel accompanying the Form I-918 that he was the victim of a “strong-arm robbery”. In response to the RFE, the Petitioner submitted a letter from Detective [REDACTED] with the Police Department of [REDACTED], New Jersey, dated February 25, 2015, who stated that the Police Department of [REDACTED] is investigating the crime against the Petitioner and that any individuals arrested will be charged with robbery, aggravated assault, and grand theft.

While we acknowledge that the letter from Detective [REDACTED] indicates that additional crimes, including aggravated assault, are being investigated, he did not specify when these crimes were detected. As a result, the record is insufficient to show the Petitioner was eligible for U nonimmigrant status at the time of filing. As provided by the regulation at 8 C.F.R. § 103.2(b)(1), a petitioner “must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.” In addition, 8 C.F.R. § 103.2(b)(12) requires that a benefit request must be denied “where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed.” According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), “[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility” Finally, as noted above, the Form I-918 Supplement B and the Investigation Report indicated that only theft under section 2C:20-3 was detected and investigated after the [REDACTED] 2012 incident.

On appeal, the Petitioner submits a second Form I-918 Supplement B signed by Detective [REDACTED] listing the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and “robbery” in the space indicating “other.” The submission of a Form I-918 Supplement B is required by section 214(p)(1) of the Act, which provides that, “[t]he petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification” The regulation at 8 C.F.R. § 214.14(c)(2)(i) requires that a Form I-918 “must include” as initial evidence a Form I-918 Supplement B “signed by a certifying official within the six months immediately preceding the filing of Form I-918.” The Form I-918 Supplement B submitted on appeal was not signed within the six-month period preceding the filing of the Petitioner’s Form I-918 and we lack authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). Accordingly, only the Form I-918 Supplement B filed with the Form I-918 will be

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considered. The Petitioner also submits on appeal a second, undated letter from Detective [REDACTED] who reasserts that the Police Department of [REDACTED] is “actively investigating this crime” and, if the suspects are eventually apprehended, the suspects will be charged with “Robbery, Aggravated Assault, Grand Theft, and any other offense we see fit under New Jersey Law.” This letter contradicts the Petitioner’s assertion in his brief on appeal that, “[t]he perpetrators of the robbery were arrested and convicted of robbery . . .” and this assertion is not supported by any evidence in the record.

Notwithstanding the letters from Detective [REDACTED] and the Petitioner’s assertions on appeal, the record shows that the crime certified was theft and the initial Form I-918 Supplement B did not indicate that any other crimes were investigated or prosecuted. Although the Petitioner states on appeal that he cooperated with police and the perpetrators of the robbery were arrested and convicted of robbery, he did not submit any evidence of this. Further, the letters from Detective [REDACTED] stating that, in the event of an arrest, the perpetrators will be charged with robbery, aggravated assault, and theft seem to indicate that the investigation is ongoing and do not demonstrate that an arrest had been made or that a conviction had been obtained for robbery. The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. As the record does not demonstrate that robbery and aggravated assault were detected or investigated prior to at the time the Form I-918 was filed, whether the nature and elements of these offenses are substantially similar to one of the qualifying criminal activities in the statutorily enumerated list will not be addressed. The Petitioner, therefore, has not established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

IV. THE REMAINING STATUTORY REQUIREMENTS

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he also cannot establish that he meets the remaining statutory requirements at section 101(a)(15)(U)(i)(II) – (IV) of the Act.

V. CONCLUSION

In 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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-R-P-*, ID# 15288 (AAO Dec. 18, 2015)