



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

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

MATTER OF B-I-L-P-

DATE: DEC. 24, 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;

....

- (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 foreign labor contracting (as defined in section 1351 of title 18, United States Code); 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’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” The regulation at 8 C.F.R. § 214.14(a)(14) states, in pertinent part, “*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 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 record reflects that the Petitioner is a citizen of Guatemala, who was apprehended and placed in removal proceedings on August 5, 2007, pursuant to section 240 of the Act for having entered the United States on or about March 15, 2005, without admission, inspection, or parole by U.S. immigration officials. On September 5, 2007, an immigration judge ordered the Petitioner’s removal to Guatemala. The Petitioner did not appeal the order, and he was removed on September 14, 2007. On the instant Form I-918, Petition for U Nonimmigrant Status, the Petitioner indicated that he again entered the United States without admission, inspection, or parole on or about November 2007.

Matter of B-I-L-P-

The Petitioner filed the instant Form I-918 with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on February 11, 2014. On May 1, 2015, the Director denied the Form I-918, concluding that the record was insufficient to establish that the Petitioner was a victim of qualifying criminal activity and therefore that he met the remaining statutory criteria. The Petitioner filed a timely appeal. On appeal, the Petitioner claims that the Director's denial was based on an erroneous application of the facts in his case because he is the victim of qualifying criminal activity under the regulation.

III. CERTIFIED CRIMINAL ACTIVITY

Detective Sergeant [REDACTED] Police Department (certifying official), signed the Form I-918 Supplement B on October 14, 2013, listing the criminal activity of which the Petitioner was a victim at Part 3.1 as involving or being similar to felonious assault. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 212.5(c) as the criminal activity that was actually investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, the certifying official indicated that the Petitioner, “[R]eported that he was robbed and beaten.”

IV. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on a review of the evidence submitted below and on appeal, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

A. Robbery Under California Law Is Not Qualifying Criminal Activity

The Form I-918 Supplement B indicates that the [REDACTED] Police Department investigated “Robbery: All Others” under CPC § 212.5(c). 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, “[C]riminal 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 certified robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. The inquiry, therefore, is not fact-based, but rather, entails comparing the nature and elements of the statutes in question.

CPC § 211 defines robbery as, “[T]he 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 of fear.” CPC § 212.5(c) states, “All kinds of robbery other than those listed in subdivisions (a) (involving the robbery of operators and passengers of various types of vehicles as well as inhabitants of dwellings and vessels) and (b) (involving robbery of persons using automated teller machines) are the second degree.” CPC § 240 defines assault as, “[A]n unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” For an assault in California to be classified as a felony, however, there must be an aggravating factor involved.

Felonious assault in California involves aggravating factors 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). CPC §§ 244, 244.5, 245, 245.3, 245.5.

No elements of robbery under the CPC are similar to assault under sections 244, 244.5, 245, 245.3, and 245.5 of the CPC. The statute investigated in this case involves taking personal property from an individual through the use of force or fear, and does not require great bodily injury, the use of a weapon, caustic or flammable substances, or assault against a protected class as a necessary component. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with an aggravating factor such as those previously listed.

The Petitioner bears the burden of proof to demonstrate his eligibility for U nonimmigrant classification. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). That burden includes showing that the Petitioner was the victim of a qualifying crime that was investigated or prosecuted by a certifying law enforcement agency. The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. The certifying official's indication at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of a crime involving or similar to 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 accompanying police report noted that the crime was robbery. There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault against the Petitioner. 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. The record does not sufficiently demonstrate that any crime other than robbery was investigated or prosecuted.

On appeal, the Petitioner states that robbery is similar to felonious assault because robbery is a felony with a range of punishment from two to nine years imprisonment, and an assault during the commission of a robbery is categorially a felony. The Petitioner refers to the police report, which provides a description of the events for which he was a victim. However, as stated above, 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 and the qualifying crimes. See C.F.R. § 214.14(a)(9). The Petitioner has not established that the elements of the certified crime of robbery are substantially similar to felonious assault under CPC §§ 244, 244.5, 245, 245.3, 245.5 or any other qualifying crime at 101(a)(15)(U)(iii) of the Act. Accordingly, the Petitioner has not established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

As the record does not contain sufficient evidence to establish that the Petitioner was the victim of qualifying criminal activity, the Petitioner also has 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. Accordingly, the Petitioner has not established his eligibility under section 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the record does not contain sufficient evidence to establish that the Petitioner was the victim of qualifying criminal activity, the Petitioner also has 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.

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

As the record does not contain sufficient evidence to establish that the Petitioner was the victim of qualifying criminal activity, the Petitioner also has 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 section 101(a)(15)(U)(i)(III) of the Act.

V. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not established that he was the victim of a qualifying crime. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of B-I-L-P-*, ID# 15010 (AAO Dec. 24, 2015)