



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

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

MATTER OF J-S-A-S-

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**

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

(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[.]

*See also* 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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[.]

“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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for 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.

The burden of proof is on the Petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). We conduct appellate review on a *de novo* basis. 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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims on the instant Form I-918, Petition for U Nonimmigrant Status, to have entered the United States on October 29, 2001, without inspection, admission or parole.<sup>1</sup> The Petitioner filed the Form I-918 on October 22, 2013. On September 8, 2014, the Director issued a request for evidence (RFE) that the Petitioner was the victim of a qualifying crime and that he had suffered substantial abuse as a result of qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility. The Director determined that the Petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, the Petitioner contends that he is eligible for U nonimmigrant classification because he was the victim of terrorist threats, which he claims are similar to the qualifying crime of felonious assault.

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<sup>1</sup> In his personal statement, the Petitioner claims to have entered on October 28, 2004.

(b)(6)

*Matter of J-S-A-S-*

### III. ANALYSIS

Upon review our *de novo* review, the Petitioner has not overcome the Director's decision to deny the petition.

#### A. Certified Criminal Activity

According to the Petitioner in his affidavits, he was the victim of terrorist threats on [REDACTED] 2012, when a stranger threatened to kill him and his sister. In support of his Form I-918, the Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification, signed by [REDACTED] Special Victim Crime Unit, of the [REDACTED] California, Police Department (certifying official). The certifying official listed the criminal acts of which the Petitioner was a victim at Part 3.1 as involving or being similar to felonious assault. At Part 3.3, the certifying official listed the statutory citation of the crime investigated or prosecuted as California Penal Code (Cal. Penal Code) section 422 (criminal threats). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the suspect threatened to kill the Petitioner and his sister and that the Petitioner was afraid.

#### B. Criminal Threats under California Law is not Qualifying Criminal Activity

The particular crime that was certified, criminal threats, 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). 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, criminal threats under section 422 is defined, in pertinent part, as follows:

(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Cal. Penal Code § 422 (West 2015).

Assault in California is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2015). Felony assault or assault with a deadly weapon or force likely to produce great bodily injury, is defined, in pertinent part as:

(a)(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 in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245(a)(1) (West 2015).<sup>2</sup>

The statute investigated in this case requires only a threat to commit a crime which will result in death or bodily injury to another in such a way that conveys sufficient gravity that the person reasonably fears for their own or their family’s safety, but does not require that an attempt to commit an injury or an assault actually occur. Again, felonious assault involves an aggravating factor such as the use of a deadly weapon or an instrument other than a firearm in the commission of an assault.

On appeal, the Petitioner contends that section 422 of the California Penal Code is similar to felonious assault because both crimes include elements relating to fear and bodily injury, and do not require an actual physical injury. As discussed above, however, California Penal Code section 422 lacks the requirement of a present ability to commit an injury, and deals with threats as opposed to an attempt, and is therefore not substantially similar to felonious assault. 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 certifying official did not indicate that his office or any other law enforcement authority investigated the perpetrator for any crime other than criminal threats.

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 U.S. Citizenship and Immigration Services (USCIS) with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the Petitioner submitted a Form I-918 Supplement B on which the certifying official marked the box indicating the criminal activity involved or was similar to felonious assault, the evidence in the record, including the information on

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<sup>2</sup> For an assault in California to be classified as a felony, there must be an aggravating factor involved. In addition to a deadly weapon and great bodily injury, other aggravating factors include 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.

the Form I-918 Supplement B, does not demonstrate that the crime of felonious assault or any similar crime was ever investigated or prosecuted. The certifying official did not list a statutory citation for felonious assault as criminal activity that was investigated or prosecuted; he only cited criminal threats.

On appeal, the Petitioner also claims that the facts of what occurred to him are like those of an attempted felonious assault. However, as previously indicated, 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 criminal statute of the crimes that was investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). Therefore, our analysis focuses upon what has been certified in the Form I-918 Supplement B, rather than the Petitioner's descriptions of the incident in question. The comparison of the nature and elements of the criminal offense of criminal threats does not demonstrate a substantial similarity to the nature and elements of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, or an attempt to commit any of those crimes, including felonious assault. The Petitioner has, therefore, not established that he is the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

**B. The Petitioner Does Not Meet Any of the Remaining Eligibility Criteria**

Because the Petitioner did not establish that he was the victim of qualifying criminal activity, he cannot meet the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act.

**IV. CONCLUSION**

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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-S-A-S-*, ID# 15011 (AAO Dec. 24, 2015)