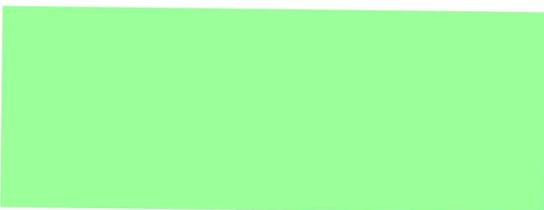




U.S. Citizenship
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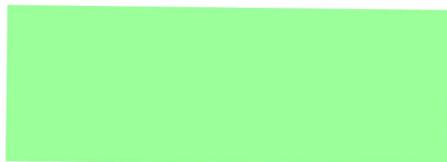


Date: FEB 03 2015 Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner failed to establish that he was the victim of qualifying criminal activity and suffered resultant substantial physical or mental abuse. On appeal, the petitioner submits a brief.

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;

Felonious assault is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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).

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

* * *

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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States on June 1, 1986 without admission, inspection or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 9, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On December 18, 2013, the director issued a Request for Evidence (RFE) that, among other things, the crime listed on the law enforcement certification was a qualifying crime and that the petitioner suffered resultant substantial physical or mental abuse. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner claims that the crime of which he was a victim was in fact felonious assault.

Claimed Criminal Activity

In his declaration, the petitioner recounted that on the evening of [REDACTED] while delivering pizza, he was confronted first by one man who grabbed the pizza warmer bag and bottle of soda from his hands and then by three others who raised their hands as if to hit him. The petitioner recalled that one of the culprits started punching him and they grabbed his money bag and ran off. The petitioner stated that he immediately reported the incident to police who took a report. He was contacted a few days later by the district attorney's office which reported that one of the perpetrators had been apprehended and requested that he provide a more detailed description of the remaining suspects. The petitioner appeared in court as requested by the district attorney's office and learned that at least one defendant would be sentenced.

The Form I-918 Supplement B that the petitioner submitted was signed by Sergeant [REDACTED] Violent Crimes Unit, [REDACTED] California Police Department (certifying official), on October 24, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and robbery. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211, robbery – strong arm, 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 the victim of an armed robbery under California Penal Code 211. While delivering pizza for [REDACTED] on the night mentioned, he was attacked and beaten by four armed perpetrators. They stole from him approximately \$43 dollars in cash and food. He immediately reported the incident to the police and offered to the District Attorney to testify against his assailants.” At Part 3.6, which asks the certifying official to provide a description of any known or documented injury to the victim, he indicated that “none were documented in the police report.”

*Analysis*¹

Robbery under California Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and crime report from the [REDACTED] Police Department 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 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 robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 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 Cal. Penal Code, “[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.” Cal.

¹ We conduct appellate review on a *de novo* basis.

Penal Code § 211 (West 2014). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2014). For an assault in California to be classified as a felony, there must be an aggravating factor involved. Felonious assault in California involves 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). Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2014).

No elements of robbery under Cal. Penal Code § 211 are similar to felonious assault under Cal. Penal Code §§ 244, 244.5, 245, 245.3, or 245.5. The statute investigated in this case involves taking personal property from an individual through the use of force or fear, and does not require violent or great bodily injury, the use of a weapon or caustic/flammables substances, or assault against a protected class as a necessary component. Felonious assault in California, however, involves an attempt, with a present ability, to commit violent injury upon another with an aggravating factor such as those listed above. 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 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, not felonious assault under California law, if a felonious assault against the petitioner was actually investigated or prosecuted.² 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 evidence of record does not demonstrate that the crime of felony assault was investigated or prosecuted.

On appeal, the petitioner claims that he was “in fact the victim of a felonious assault” as one box checked at Part 3.1 indicates, and because the certifying official noted at Part 3.5 that he petitioner “was attacked and beaten by four armed perpetrators.” However, the referenced note at Part 3.5 was not provided in the handwriting of the certifying official like other information on the Form I-918 Supplement B, and is inconsistent with the accompanying police report. Additionally, neither the certifying official nor the police report identify any weapon used by the perpetrators and the petitioner himself stated only that he was punched and only by one of the robbers. The petitioner asserts that the fact that the police report does not indicate that he was the victim of felonious assault should not be given substantial weight because the report has been redacted and the redacted portions may discuss the felonious assault. We cannot go beyond the record and speculate concerning information not contained therein. Moreover, 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 crimes that were investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The petitioner has not provided the requisite statutory analysis to demonstrate that the nature and elements of Cal. Penal Code § 211 (robbery) are substantially similar to Cal. Penal Code §§ 244, 244.5, 245, 245.3, or 245.5 (felonious assault) or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

² We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4).

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. Even if the petitioner could establish that he was the victim of a qualifying crime or criminal activity, he did not demonstrate below that he suffered substantial physical or mental abuse as a result of his victimization and he submits no evidence on appeal to overcome this ground for denial. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, U.S. Citizenship and Immigration Services (USCIS) looks at, among other issues, the severity of the perpetrator's conduct, the severity of the harm suffered, the duration of the infliction of the harm and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

The Form I-918 Supplement B indicates that no injuries to the petitioner were documented in the police report. In his declaration, the petitioner stated that three robbers raised their hands "with intentions to hit" him and one started punching him before they grabbed his money bag and took off running. The petitioner did not describe any injury that resulted from the robbery but claimed he has "developed physical, emotional and mental problems." The petitioner also stated that he has "developed Type 2 diabetes." Medical documentation submitted for the record shows that the petitioner has a long family history of diabetes, was diagnosed as borderline diabetic in 1996 and has had diabetes since at least 2002. The petitioner has not articulated a nexus between his diabetes and the June 2006 robbery or shown that the condition was exacerbated as a result thereof. The petitioner claimed he was "currently looking for treatment," and submitted documents dated January 28, 2014 showing that he had begun pursuing psychological treatment through a recent workers compensation claim. The petitioner has not discussed on appeal the resultant physical or mental abuse that led him to seek mental health counseling eight years after the incident. While we do not minimize what the petitioner experienced as the victim of a robbery, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Conclusion

Although the petitioner was helpful to the [REDACTED] California Police Department in the investigation of a robbery, he has not demonstrated that the offense of robbery under CPC § 211 is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. The petitioner has not, therefore established that he was a victim of qualifying criminal activity. Consequently, and in addition, he has not established that he suffered substantial physical or mental abuse as a result of having been such a victim, as required by subsection 101(a)(15)(U)(i)(I) of the Act.

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. The petition remains denied.