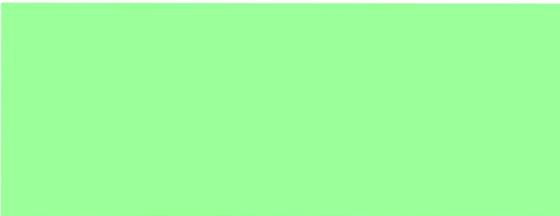


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

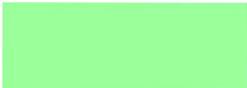


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 03 2015 Office: VERMONT SERVICE CENTER

FILE: 

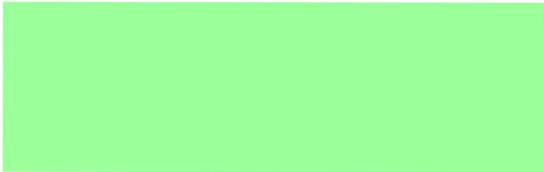
IN RE:

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)

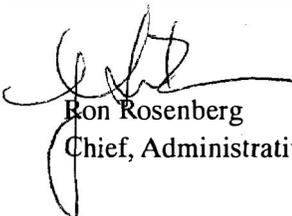
ON BEHALF OF PETITIONER:



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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter returned for entry of a new decision.

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 did not establish that she was the victim of qualifying criminal activity. On appeal, the petitioner submits a brief and additional evidence.

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 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women

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).

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.”

Relevant Procedural History

The petitioner is a native and citizen of India who claims to have entered the United States in 2003 utilizing a fraudulent B1/B2 nonimmigrant visa. 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 December 11, 2012. On the same day, the petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On October 22, 2013 and January 16, 2014, the director issued Requests for Evidence (RFEs) that the petitioner was the victim of qualifying criminal activity and suffered resultant substantial physical or mental abuse. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility and denied the Form I-918 U petition and Form I-192. In her decision denying the Form I-918 U petition, the director found that the petitioner failed to establish that Georgia’s armed robbery statute is substantially similar to felonious assault or another qualifying crime, and therefore, did not establish that she was the victim of qualifying criminal activity. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner claims that she was a victim of armed robbery, which is substantially similar to the qualifying crime of felonious assault.

Claimed Criminal Activity

In her declaration, the petitioner recounted being held up a gun point at the convenience store where she worked with her husband.

Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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The petitioner's Form I-918 Supplement B was signed by [REDACTED] of the [REDACTED] Georgia Police Department (certifying official), on September 12, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and "Other." Under "Other," [REDACTED] wrote in "armed robbery." In Part 3.3, he listed "armed robbery" 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, [REDACTED] referenced the attached incident report. The incident report indicates that the petitioner reported that the suspect pointed a handgun at her, threatened to shoot her, and demanded money from the cash register. The petitioner gave the suspect over \$3,000 and he departed the store. The Form I-918 Supplement B does not list any known injury at Part 3.6.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director's decision to deny the petitioner's Form I-918 U petition.

Armed Robbery under Georgia Law is a Qualifying Crime

The Form I-918 Supplement B and the incident report from the [REDACTED] Police Department indicate that the armed robbery was investigated. The crime of armed 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 armed robbery 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 the Georgia Code, a person commits armed robbery when "with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon." GA. CODE ANN. § 16-8-41(a) (West 2015). Armed robbery is a felony. *See* GA. CODE ANN. § 16-8-41(a) (West 2015) (proscribing the minimum punishment for this offense as imprisonment for not less than 10 years). Georgia's felonious assault statute is entitled "Aggravated assault." A person commits aggravated assault in Georgia "when he or she assaults: (1) With intent to murder, to rape, or to rob; (2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury." GA. CODE ANN. § 16-5-21 (West 2015). An individual commits assault "when he or she either: (1) Attempts to commit a violent injury to the person of another; or (2) commits an act which places another in reasonable apprehension of immediately receiving a violent injury." GA. CODE ANN. § 16-5-20 (West 2015).

In *Lucky v. State*, the Supreme Court of Georgia determined that there is no element of aggravated assault with intent to rob that is not contained in the offense of armed robbery. 689 S.E.2d 825, 828 (Ga. 2010). Specifically, the court found that both statutes require proof of an intent to rob, and that the "assault"

requirement of aggravated assault is equivalent to armed robbery's "by use of an offensive weapon," which is actual violence exerted on the victim, or force exerted by operating on the victim's fears of injury. *Id.* As armed robbery is of the same nature and contains all of the elements of aggravated assault, it is substantially similar to felonious assault under section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director's contrary determination.

Substantial Physical or Mental Abuse

A preponderance of the relevant evidence establishes that the petitioner has suffered substantial mental abuse as a result of having been a victim of the certified crime. In a personal affidavit dated September 11, 2012, the petitioner credibly recounted that after the armed robbery she was unable to work by herself at night. She reported that she left her job within six months of the crime because she was too afraid to work there, or even live in the same town. She described in probative detail having on-going nightmares and tension headaches, and fear when she goes into stores at night. In an affidavit dated September 26, 2012, family member [REDACTED] confirmed that the petitioner's mental state has deteriorated since the incident, and that she wakes up in the middle of the night and declines to go into stores at night. In an affidavit dated September 18, 2012, former customer [REDACTED] described the petitioner on the day after the incident as "very intense" and "very scared," and indicated that the petitioner still appears "shaken" by the ordeal. In an undated affidavit, friend [REDACTED] discussed the permanent change in the petitioner's demeanor after the incident, and her fear of being in [REDACTED]

In response to the RFE, the petitioner submitted a psychological evaluation, dated November 12, 2013, prepared by licensed professional counselor [REDACTED]. In the evaluation, Mr. [REDACTED] indicated that the petitioner continues to experience anxiety and depression with posttraumatic stress features as a result of the crime, which affect her activities of daily life.

When viewed in its totality, the evidence demonstrates impairment to the petitioner's mental soundness as a result of her victimization that constitutes substantial mental abuse under the factors described in the regulation at 8 C.F.R. § 214.14(b)(1) and as required under section 101(a)(15)(U)(i)(I) of the Act. The director's contrary determination is withdrawn.

Possession of Information of the Criminal Activity, Helpfulness to Law Enforcement, & Jurisdiction

The director determined that the petitioner possessed information regarding the crime, was helpful to law enforcement, and that the criminal activity occurred in the United States; however, as the director found that the armed robbery did not constitute qualifying criminal activity, she denied the Form I-918 U petition on these additional grounds. The petitioner has established on appeal that the armed robbery of which she was a victim is a qualifying crime. We, therefore, reverse the director's decision on these grounds and hereby conclude that the petitioner has established eligibility under sections 101(a)(15)(U)(i)(II),(III), and (IV) of the Act.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

In this case, the director determined that the petitioner was inadmissible under sections 212(a)(7)(B)(i)(I) (no valid unexpired immigrant visa or entry document), and 212(a)(6)(C)(i) (misrepresentation of a material fact) of the Act without analysis and denied the petitioner's Form I-192 waiver application solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director Denying Petitioner's Form I-192*, dated February 24, 2014. Because the petitioner has overcome this basis for denial on appeal, we will remand the matter to the director for reconsideration of the petitioner's Form I-192 waiver application.

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 been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The February 24, 2014, decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.