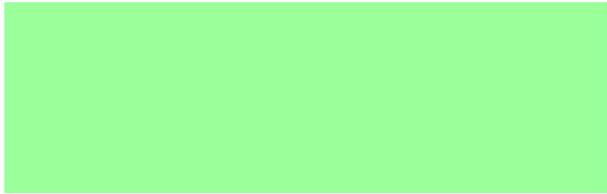


(b)(6)

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

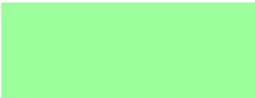


U.S. Citizenship
and Immigration
Services

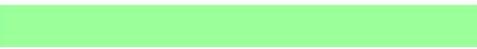


Date: FEB 05 2015

Office: VERMONT SERVICE CENTER

FILE: 

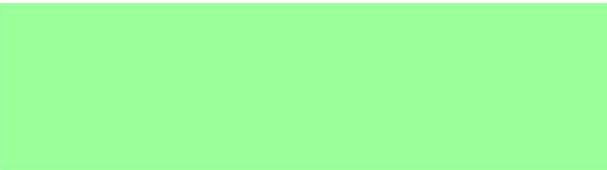
IN RE:

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:

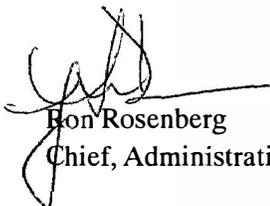


INSTRUCTIONS:

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,



Hon 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 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 had not established that he was the victim of qualifying criminal activity, and, therefore, was unable to meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The petitioner filed a timely appeal and submitted a supporting brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) of the Act provides 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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14(b). 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."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on July 30, 2003 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), with an accompanying Form I-918, U Nonimmigrant Status Certification (Form I-918 Supplement B), and Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192), on January 18, 2013. On November 14, 2013, the director issued a Request for Evidence (RFE) for the petitioner to establish that the petitioner was a victim of qualifying criminal activity or criminal activity that is substantially similar to qualifying criminal activity set forth in section 101(a)(15)(U)(iii) of the Act. The petitioner responded to the RFE with a brief and additional evidence. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition accordingly on April 25, 2014. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that he was a victim of the qualifying crime of felonious assault.

Claimed Criminal Activity

The petitioner, in his personal statement, indicated that in January 2012, he and his family were victimized by an individual on two occasions when he took things from their home without their permission. When confronted, the perpetrator apologized and stated he would not do it again. The petitioner stated that a few days later in February¹, he and his family were driving past their home when they saw a bike in front of their home and the same individual walking past their home. The petitioner returned to the house and identified missing items. Suspecting that the theft was attributable to same perpetrator, the petitioner had his wife call the police while he and his daughter went to look for the perpetrator. They saw the perpetrator coming out of another home carrying the stolen items. The perpetrator apologized repeatedly while the petitioner's daughter called the police. The petitioner attempted to physically restrain the perpetrator until the police arrived. However, the police were delayed in arriving. The perpetrator struggled and eventually got away, still apologizing. When the police arrived, they were able to locate and arrest the perpetrator. Sometime

¹ According to the Form I-918 Supplement B, criminal records, and the affidavit of another family member, this incident took place on January 25, 2012.

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after the perpetrator was released, the petitioner's home was robbed. The petitioner recalled that before the robbery, another individual had repeatedly knocked on their door several times a day looking for the petitioner's son. He believes that this individual, perhaps in conjunction with the first perpetrator, may have been responsible for the robbery. The petitioner stated that his family has not been at peace since these events and that he has had nightmares about people breaking in and harming them. The record indicates that the perpetrator was charged with trespass and theft by unlawful taking for the incident on January 25, 2012, but was convicted of only the latter charge.

The Form I-918 Supplement B that the petitioner submitted was signed on December 13, 2012 by [REDACTED] Deputy Attorney, [REDACTED] Courthouse² in [REDACTED] Nebraska (certifying official). The certifying official checked the box for "Attempt" and "Other" in Part 3.1, which inquires about the criminal activity of which the petitioner was a victim. In Part 3.3, the certifying official cited sections 20-154 and 20-151 of the [REDACTED] Municipal Codes, which relate to the offenses of trespass and theft by unlawful taking respectively, as the relevant criminal statutes for the criminal activity that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he stated theft and trespass. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated that the petitioner was afraid and nervous, and referenced unspecified attachments for further details.

Analysis

We conduct appellate review on a *de novo* basis. Upon review, we find no error in the director's decision to deny the petition based on the stated grounds.

Qualifying Criminal Activity

The record shows that the petitioner was a victim of trespass and theft by unlawful taking on January 25, 2012. The certifying official specifically stated in the Form I-918 Supplement B that the petitioner was a victim of trespass and theft by unlawful taking on January 25, 2012 and provided the corresponding municipal city codes as the criminal activity that was investigated or prosecuted. The certifying official did not indicate, and the record otherwise lacks any evidence, that the qualifying criminal activity of felonious assault was also detected, investigated or prosecuted, as contended by the petitioner. *See* 8 C.F.R. § 214.14(a)(5)(definition of *Investigation or prosecution*).

The crimes of trespass and theft by unlawful taking are not specifically listed as qualifying crimes 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 crimes investigated, trespass and theft by unlawful taking, 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. Insofar as the petitioner here contended that he is a victim of

² City of [REDACTED] Law Department.

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an offense “closely related” to the qualifying criminal offense of felonious assault, as defined under section 28-309 of the Nebraska Revised Statute (NRS), we will determine whether the offenses of which he was a victim, theft by unlawful taking and trespass, are substantially similar to felonious assault.

At the time of the offenses in 2012, section 20-151 of the [REDACTED] Municipal Code, provided, in pertinent part, as follows:

Sec. 20-151 – Theft by unlawful taking

It shall be unlawful for any person purposely or knowingly to take, use or exercise control over the property of another person with the intent to deprive that person, temporarily or permanently, of such property or its use.

[REDACTED] Municipal Code § 20-151

In 2012, section 20-154 of the [REDACTED] Municipal Code provided as follows:

Sec. 20-154 – Trespass

It shall be unlawful for any person purposely or knowingly to enter or be upon the property of another person without being invited, licensed or privileged to do so.

[REDACTED] Municipal Code § 20-154

In 2012, the Neb. Rev. Stat. § 28-309 provided, in pertinent part, as follows:

Assault in the second degree; penalty

(1) A person commits the offense of assault in the second degree if he or she:

- (a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;
- (b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

* * *

(2) Assault in the second degree shall be a Class III felony

Neb. Rev. Stat. § 28-309 (West 2012). The statutory elements of the offenses of trespass and theft by unlawful taking are not substantially similar to those for felony assault under Neb. Rev. Stat. § 28-309. Section 20-151 of the [REDACTED] Municipal Code is a theft offense, and is, like trespass under section 20-154 of the [REDACTED] Municipal Code, strictly an offense against property. In contrast, second degree felony assault under Nebraska law is an offense against another person that involves the intentional infliction of bodily injury with a dangerous instrument or recklessly causing serious bodily injury to another person.

Accordingly, the offenses of theft by unlawful taking and trespass are not substantially similar to felonious assault. *See* 8 C.F.R. § 214.14(a)(9).

Counsel for the petitioner contends that under a totality of the circumstances, the record shows that the perpetrator assaulted and physically attacked the petitioner during the January 25, 2012 incident and that the perpetrator's acts qualify as felonious assault, as defined under Neb. Rev. Stat. § 28-309. *See* Brief on Appeal, at 2, 4. However, the petitioner, himself, never indicated that the perpetrator assaulted or attacked him during that incident.³ There is also no indication in the police incident report and other criminal records provided that the petitioner ever reported being assaulted or that such an offense was detected by law enforcement officials.⁴ Accordingly, counsel's assertions have no merit, as they are unsupported by the record. Even if the petitioner had claimed that he was assaulted, the proper inquiry is not an analysis of the factual details underlying the criminal activity as asserted by the petitioner, but rather a comparison of the nature and elements of the crimes that were detected, investigated or prosecuted and one of the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). As indicated, the only crimes detected, investigated or prosecuted were trespass and theft by unlawful taking and, as defined in the [REDACTED] Municipal Code, they are not substantially similar to Nebraska's felonious assault statute. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of qualifying 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 qualifying criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

Possession of Credible or Reliable Information Establishing Knowledge Concerning Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish 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 subsection 101(a)(15)(U)(i)(III) of the Act.

³ At most, the petitioner indicated that there was a struggle as he restrained the perpetrator by holding his arm, and that he let go of the perpetrator, who repeatedly apologized during the incident.

⁴ Counsel also asserts that the multiple perpetrators were charged with burglary under Neb. Rev. Stat. § 28-507, after breaking into the petitioner's home and physically assaulting him. However, the Form I-918 Supplement B, the petitioner's statement, and the criminal records submitted make no reference to the commission of burglary and physical assault offenses against the petitioner on January 25, 2012 by multiple perpetrators.

Conclusion

The petitioner has failed to demonstrate that the offenses of theft by unlawful taking and trespass under sections 20-151 and 20-154 respectively of the [REDACTED] Nebraska Municipal Code, are qualifying crimes or are substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offense of which he was the victim is qualifying criminal activity prevents him from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. Consequently, he is statutorily ineligible for U nonimmigrant status.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.