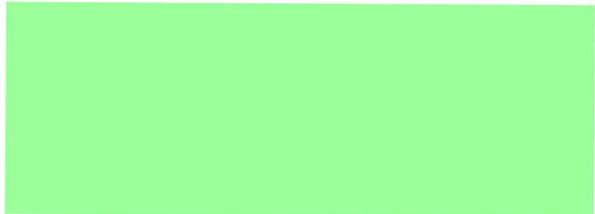




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 09 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 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 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;

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).

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;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

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 initially entered the United States on November 1, 1999, 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 November 20, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On October 30, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime, that the petitioner suffered resultant substantial physical or mental abuse, and for evidence in support of her Form I-192 waiver application. 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 asserts that although terroristic threats under Minnesota law were investigated, she is the victim of felonious assault, a qualifying crime. In the alternative, she claims that terroristic threats may be considered a crime of violence which is similar to murder and criminal sexual assault.

*Claimed Criminal Activity*

In her affidavits, the petitioner recounted that in 2000, one of her high school classmates, a gang member, threatened her. When the petitioner told the school police officer, he searched the suspect and found a knife. The petitioner obtained a restraining order against the suspect, but her friends continued to harass the petitioner; and one day, the petitioner was hit in the face by one of the suspect's friends. The petitioner reported the assault to the police but was harassed for the next two years in high school.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing, and one on appeal. The first Form I-918 Supplement B that the petitioner submitted was signed by Captain Minnesota, Police Department, on May 24, 2012. Captain listed the criminal activity of which the petitioner was a victim at Part 3.1 as terroristic threats. In Part 3.3, Captain referred to Minnesota Statutes § 609.713, terroristic threats, as the criminal activity that was investigated or prosecuted. When describing the criminal activity being investigated or prosecuted, Captain indicated that on 2000, the petitioner: "was approached by the perpetrator at MN. The [petitioner] reported that the perpetrator threatened to shoot her . . . [and she] had been threatening her for the past couple of days."

The second Form I-918 Supplement B that the petitioner submitted on appeal was signed by Commander Minnesota, Police Department (certifying official), on May 29, 2014. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and terroristic threats, and listed the statutory citations for the crimes at Part 3.3 as Minnesota Statutes §§ 609.713 (terrorist threats), 609.02 (felony definition), and 609.224 (assault). At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that on 2000, the "perpetrator, a known gang member of the threatened to

shoot the [petitioner] at the school. The [petitioner] disclosed that she had been receiving threats for several days.”

*Analysis*

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director’s decision to deny the petitioner’s Form I-918 U petition.

Victim of Qualifying Criminal Activity

The case report from the [redacted] Police Department and the first Form I-918 Supplement B indicate that the crime investigated was terroristic threats. The crime of terroristic threats is not specifically listed 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, terroristic threats and assault, 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 Minnesota law, “[w]hoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another” is guilty of terroristic threats.” M.S.A. § 609.713 (West 2014). A person is guilty of assault in the fifth degree, a misdemeanor, when he or she commits “an act with intent to cause fear in another of immediate bodily harm or death” or “intentionally inflicts or attempts to inflict bodily harm upon another.” M.S.A. § 609.224 (West 2014). In Minnesota, assault in the first degree through assault in the fourth degree are classified as felonies. Assault in the first degree occurs when great bodily harm is inflicted (M.S.A. § 609.221); assault in the second degree occurs when a dangerous weapon is used (M.S.A. § 609.222); assault in the third degree occurs when substantial bodily harm is inflicted (M.S.A. § 609.223); and assault in the fourth degree occurs when committed against a protected class member (M.S.A. § 609.223.1) (West 2014).

No elements of terroristic threats under Minn. Stat. Ann. § 609.713 are similar to felony assault under Minn. Stat. Ann. §§ 609.221, 609.222, 609.223, or 609.223.1. The statute investigated in this case involves threats to commit a crime of violence. M.S.A. § 609.713. However, first, second, third, and fourth degree felony assault under Minnesota law require, as an element of the offense, the presence of an additional aggravating factor, such as the infliction of a greater level of harm (*great* or *substantial* bodily harm),<sup>1</sup> use of a

<sup>1</sup> As defined in Chapter 609 of the M.S.A., the term “bodily harm” means “physical pain or injury, illness, or any impairment of physical condition;” substantial bodily harm “means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary or substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member;” and great bodily harm “means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. Ann § 609.02 (West 2014).

dangerous weapon, or commission against a protected class. The distinction among the assault statutes is recognized under Minnesota law, and a crime of terroristic threats does not contain as an element the presence of an aggravating factor. Therefore, the offenses of terroristic threats and felony assault are not substantially similar.

The second Form I-918 Supplement B that the petitioner submitted on appeal indicated at Part 3.1 that the petitioner was the victim of felonious assault, and contained two additional statutory citations at Part 3.3: M.S.A. § 609.02 (definition of felony); and MSA § 609.224 (misdemeanor assault). 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. According to the petitioner, she obtained a new Form I-918 Supplement B signed by a different certifying official, who indicated that "she also believed that this crime qualified as a felonious assault." However, there is no evidence that the certifying agency actually investigated an attempted or actual felonious assault against the petitioner in 2000 and, thus, the certifying official's "belief" that the crime could have qualified as a felonious assault is insufficient.<sup>2</sup> The police incident report that was completed at the time of the incident demonstrates that no criminal activity other than terroristic threats was investigated.

On appeal, the petitioner points to the facts of the criminal activity to demonstrate that she was the victim of a felonious assault and further asserts that the Minnesota legislature intended for terroristic threats to be treated as a serious violent crime, similar to murder and criminal sexual assault, by including the term *crime of violence* in its definition at M.S.A. §609.713. However, as stated above, the proper inquiry is not an analysis of the factual details underlying the criminal activity or a legislature's intent, but a comparison of the nature and elements of the crime that was 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 M.S.A. § 609.713 (terroristic threats) are substantially similar to felonious assault under Minn. Stat. Ann. §§ 609.221, 609.222, 609.223, or 609.223.1, 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.

*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. The petition remains denied.

<sup>2</sup> 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).