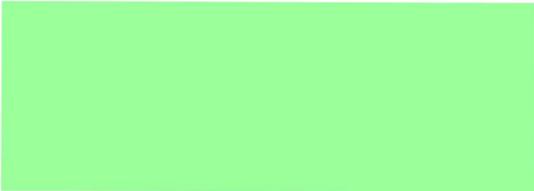


(b)(6)

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 11 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 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 or that she suffered resultant substantial physical or mental abuse. 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 labor contracting (as

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

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 explained 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.”

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 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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on or about May 27, 2002, without being inspected, admitted, or paroled. 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 June 18, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On July 23, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime and that the petitioner had suffered substantial physical or mental abuse as a result of qualifying criminal activity. 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 appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that she suffered substantial physical or mental abuse as a result of being a victim of felonious assault, a qualifying crime.

Claimed Criminal Activity

In her declaration, the petitioner recounted that on [REDACTED] she was walking at night when a man pushed her to the ground, placed a shiny, sharp object to her neck, and took her belongings. She stated that she struggled with the man who took off running, leaving her bruised on the street. The petitioner indicated that she was afraid the man was going to kill her and that he would return to the same place to harm her again. She described being in therapy for approximately two years to address the frustrations she has had as a result of the assault as well as being raped and abused when she first arrived in the United States. She also stated that she reported the incident to the police.²

The Form I-918 Supplement B that the petitioner submitted was signed by Captain [REDACTED] of the [REDACTED] Minnesota, Police Department (certifying official) on April 12, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as other: robbery/assault. In Part 3.3, the certifying official referred to Minnesota Statutes section 609.24, simple 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, he indicated that the petitioner "was assaulted and robbed while walking home from work" and referred to the attached police report. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "was hit and pushed to the ground by the attacker" and her purse was stolen.

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 denying the petitioner's Form I-918 U petition.

² The police report submitted with the Form I-918 Supplement B, dated August 12, 2004, shows that the petitioner reported the crime more than two months after it took place because she "found out she needed [a police report] to get a new ID."

Simple Robbery under Minnesota Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and the police report listed § 609.24 of the Minnesota Statutes, simple robbery, as the crime the certifying agency investigated or prosecuted. Simple robbery is not 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.

Simple robbery under Minnesota law is defined as, “Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.” MINN. STAT. ANN. § 609.24. Minnesota law defines assault as “(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another.” MINN. STAT. ANN. § 609.02. For an assault in Minnesota to be classified as a felony, there must be an aggravating factor involved. Felonious assault in Minnesota involves assault that includes the infliction of demonstrable bodily harm, use of a dangerous weapon or substantial bodily harm, or assault against a specific class of persons (such as peace officers, judges, fire fighters, emergency medical personnel, victims of child abuse, children under the age of four, victims who were previously assaulted by the same perpetrator, etc.). MINN. STAT. ANN. §§ 609.221, 609.222, 609.223, 609.2231, 609.224.

No elements of simple robbery under Minnesota Statutes section 609.24 are similar to felonious assault under sections 609.221, 609.222, 609.223, 609.2231, and 609.224. Simple robbery involves knowingly taking personal property from an individual through the use or threat of force, and does not involve any aggravating factor such as use of a dangerous weapon, intentionally inflicting demonstrable bodily harm, or assault against a specific class of persons as required for felonious assault. Although the petitioner claims on appeal that simple robbery is a crime of violence under Minnesota Statutes section 624.712 and 18 U.S.C. § 16, the standard for inclusion as qualifying criminal activity is that the crime investigated or prosecuted is “substantially similar” to one of the enumerated crimes, not that it is a crime of violence, and 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). Therefore, regardless of whether or not simple robbery is a crime of violence, because the elements of simple robbery are not substantially similar to the elements of felonious assault, it is not a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

To the extent the certifying official indicated that the petitioner was a victim of “robbery/assault,” Minnesota law provides for five degrees of assault, not all of which are felonies. MINN. STAT. ANN. §§ 609.221, 609.222, 609.223, 609.2231, 609.224. While assault may be a lesser included offense of felonious assault, the standard for inclusion as a qualifying criminal activity is that the crime investigated or

prosecuted is substantially similar to one of the enumerated crimes, not that it is a lesser included offense. 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 record does not demonstrate that felonious assault was investigated or prosecuted. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that she 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.

Conclusion

The petitioner has failed to establish that she was the victim of a qualifying crime and suffered substantial physical or mental abuse as a result. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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.