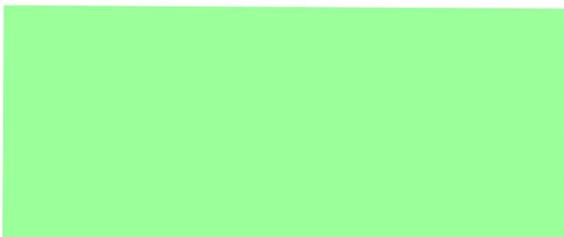


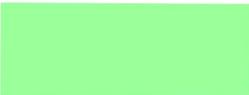
(b)(6)

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

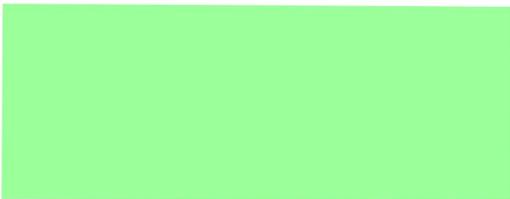


Date: FEB 20 2015 Office: VERMONT SERVICE CENTER FILE: 

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:

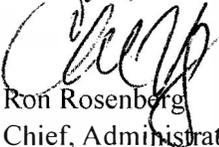


INSTRUCTIONS:

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,


RM 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 he: (1) has been the victim of qualifying criminal activity; (2) has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity; and (3) possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity. 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;

(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.

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 he last entered the United States on or about April 5, 2000, 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 January 4, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. The director issued a Request for Evidence (RFE) requesting that the petitioner explain the inconsistencies in the evidence, that the crime listed on the Form I-918 Supplement B 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 he suffered substantial physical or mental abuse as a result of being a victim of terroristic threats and acts, and felonious assault, a qualifying crime.

Claimed Criminal Activity

In his initial declaration, the petitioner recounted that on [REDACTED] at approximately 12:30 a.m., he was asleep when he heard a car honk its horn outside of his house. He described looking out of his window and not recognizing the driver, so he walked to his door and opened it. He stated that the driver got out of his car and began insulting the petitioner, claiming he had problems with the petitioner once before. The petitioner explained that the driver was drunk and must have confused him with someone else. He stated that the driver grabbed his shirt, threw him to the ground, and they began to fight. The petitioner recounted

his wife calling relatives who live close by for help. The driver reportedly ran to his car when the petitioner's family arrived and threatened that "he was going to look for [the petitioner] at work on the next day or wherever he could find [him] to kill [him]." The petitioner stated that the police arrived twenty minutes later and he reported the incident. In response to the RFE, the petitioner stated that on the morning of the incident, an employee, [REDACTED] was upset by what the petitioner had stated during a meeting at work. According to the petitioner, [REDACTED] told him, "if you fire me this will not stay like this." The petitioner described the incident he had previously recounted in his first declaration, but added that the person who hit him at his house told him that "he is there because of what happen in the meeting with his friend." The petitioner also added that he told the police that "there was a man at work that had threaten[ed] to kill [him]."

The Form I-918 Supplement B that the petitioner submitted was signed by Sheriff [REDACTED] of [REDACTED] Georgia (certifying official) on September 14, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as attempt to commit any of the names crimes, and other: terroristic threats and acts. In Part 3.3, the certifying official listed Georgia Code § 16-11-37, terroristic threats and acts, 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 stated, "During a work meeting, [the petitioner] was threatened by his employee and suspect, [REDACTED] because the suspect was not happy with results of the meeting. [The petitioner] was told that he was going to be killed the following work day at [REDACTED]" 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 "fears for his life and safety. He suffers mental anguish at the thought he can be harmed or killed at any minute."

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.

Terroristic Threats and Acts under Georgia Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and the police report listed § 16-11-37 of the Georgia Code, terroristic threats and acts, as the reported crime. The petitioner contends on appeal that he is a victim of an incident that began as terroristic threats and acts at his job site, and then later escalated to felonious assault when he was beaten at his house. Terroristic threats and acts is not listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the Act 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 terroristic threats and acts 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.

Terroristic threats and acts under Georgia law is defined as:

(a) A person commits the offense of a terroristic threat when he or she threatens to commit any crime of violence, to release any hazardous substance . . . , or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience. . . .

(b) A person commits the offense of a terroristic act when:

- (1) He or she uses a burning or flaming cross or other burning or flaming symbol or flambeau with the intent to terrorize another or another's household;
- (2) While not in the commission of a lawful act, he or she shoots at or throws an object at a conveyance which is being operated or which is occupied by passengers; or
- (3) He or she releases any hazardous substance or any simulated hazardous substance under the guise of a hazardous substance for the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

GA. CODE ANN. § 16-11-37. Georgia law defines simple assault as when a person “(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. 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).

On appeal, the petitioner states that he was a victim of an incident that began as a Terroristic Threats and Acts at his job site which later escalated to a felonious assault. However, the certifying official did not indicate at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of felonious assault and he presented no evidence that he or any other law enforcement entity investigated or that there is any intent to investigate felonious assault. Further, no elements of terroristic threats and acts under Georgia Code § 16-11-37 are similar to aggravated assault under Georgia Code § 16-5-21. A terroristic threat or act involves threatening to commit a crime of violence, including burning or releasing a hazardous substance, and does not involve assault with intent to murder, rape, or rob with a deadly weapon or with an instrument that can cause serious bodily injury. The Form I-918 Supplement B and the incident report from the Sheriff’s Office do not indicate that the petitioner was beaten or assaulted in any way. For instance, the certifying official states only:

There was a me[e]ting at [REDACTED] concerning work. [The petitioner] is the crew leader. [REDACTED] employee was not happy with result of me[e]ting and told [the petitioner] he was going to kill him at work [REDACTED] in [REDACTED] on next work date.

Similarly, the Form I-918 Supplement B described only that [REDACTED] threatened to kill the petitioner because he was not happy with the results of a meeting at work. As there is no indication in the record that any law enforcement entity detected, investigated, or prosecuted felonious assault, 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 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 Information Concerning Qualifying Criminal Activity

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 possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

Conclusion

The petitioner has failed to establish that he: (1) was a victim of qualifying criminal activity; (2) suffered substantial physical or mental abuse as a result of having been such a victim; and (3) possesses information concerning the qualifying crime or criminal activity upon which his petition is based. He 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.