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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

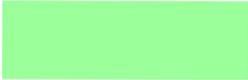


U.S. Citizenship  
and Immigration  
Services

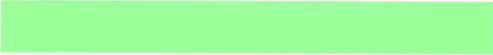


Date: FEB 26 2015

Office: VERMONT SERVICE CENTER

FILE: 

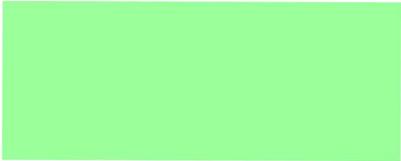
IN RE:

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 The director's decision will be withdrawn and the matter returned for entry of a new decision.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 he was the victim of 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;

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(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[.]<sup>1</sup>

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.”

<sup>1</sup> 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 in December of 1999 without inspection, admission, 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 December 13, 2012. 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) that the crime listed on the law enforcement certification was a qualifying crime. The petitioner submitted a brief in response to the RFE 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 was the victim of felonious assault, a qualifying crime.

*Claimed Criminal Activity*

In his declaration, the petitioner recounted that on December 30, 2006, he was locking his car door while outside of his apartment building when a young man approached him and punched him in the face. The petitioner described running toward his apartment to get away, but his assailant grabbed his shirt and punched him in the head repeatedly. According to the petitioner, his cousin saw the attack from his balcony and went to help him while the petitioner's wife called 911. He described that three other men appeared and started hitting his cousin. The petitioner stated that one of the assailants got onto his balcony, kicked the door off of its tracks to get into the apartment, and grabbed the telephone out of his wife's hands. The petitioner recounted that his wife ran out of the apartment with their daughter and that an older woman started yelling at the men and pushing them off of the petitioner's balcony. The police arrived shortly afterwards and the petitioner identified his assailant.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Chief of Police, [REDACTED] Washington, Police Department (certifying official), on June 13, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official listed Washington Revised Code §§ 9A.36.021, 9A.36.021(1)(e), and 9A.36.041 as the statutory citations for 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 outside of his vehicle by a neighbor. He tried to get away and run to his apartment but was assaulted again. He finally entered his residence and the assailant and two of his friends kicked the back slider and knocked it off its track in order to enter the victim's residence."<sup>2</sup>

*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.

<sup>2</sup> Contrary to the petitioner's assertion on appeal, USCIS has discretion to determine the evidentiary value of the evidence, including the Form I-918 Supplement B. See 8 C.F.R. § 214.14(c)(4).

Assault in the Second Degree under Washington Law is Qualifying Criminal Activity

The Form I-918 Supplement B listed Washington Revised Code §§ 9A.36.021 and 9A.36.041, assault in the second and fourth degrees, respectively, as the reported crime. In addition, the Form I-918 Supplement B specified the subsection of second degree assault under which the petitioner's assailant was investigated or prosecuted as Washington Revised Code § 9A.36.021(1)(e), which states:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

\* \* \*

(e) With intent to commit a felony, assaults another. . . .

(2)(a) [A]ssault in the second degree is a class B felony.

WASH. REV. CODE ANN. § 9A.36.02. Therefore, assault in the second degree in Washington is a felony. WASH. REV. CODE ANN. § 9A.36.02(2)(a).

The police report in the record, dated December 30, 2006, indicates that the petitioner was punched three times in the head and tried to run away, but was assaulted again. The police report further describes that the assailant and his friends kicked the petitioner's back slider to his apartment off of its tracks. Therefore, the police report is consistent with the Form I-918 Supplement B as well as the petitioner's declaration that he was assaulted, tried to get away but was assaulted again, and that the assailants kicked his apartment door off of its tracks during the encounter. The evidence therefore supports the petitioner's contention, and the certifying official's determination, that a felonious assault under section 101(a)(15)(U)(iii) of the Act was investigated or prosecuted. To the extent the director stated that the police report indicated that the assailant was only charged with assault in the fourth degree, a gross misdemeanor, and not assault in the second degree or residential burglary, the petitioner is correct on appeal that under 8 C.F.R. § 214.14(a), the term *investigation or prosecution* "refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." As noted by the petitioner in his brief, USCIS recognizes that, for various reasons, the perpetrator may not always be charged with or prosecuted for the qualifying criminal activity. *See* Brief on Appeal at 5; 72 Fed. Reg. 53014, 52018 (September 17, 2007). Here, the petitioner has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the director's contrary determination.

*Admissibility*

Although the petitioner has overcome the ground of denial, the petition may not be approved because he remains inadmissible to the United States and his 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,

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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 §§ 212(a)(5)(A)(i) (labor certification), 212(a)(6)(A)(i) (entry without inspection), 212(a)(6)(C)(i) (fraud or willful misrepresentation of a material fact), 212(a)(6)(E)(i) (assisting another alien to unlawfully enter the United States), 212(a)(7)(A)(i)(I) (entry without proper documentation), and 212(a)(9)(B)(i)(II) (unlawful presence) 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.<sup>3</sup> See *Decision of the Director Denying Petitioner's Form I-192*, dated March 3, 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 his 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 March 3, 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.

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<sup>3</sup> The record does not appear to support the director's determination that the petitioner is inadmissible under sections 212(a)(5)(A)(i) (labor certification), 212(a)(6)(C)(i) (fraud or willful misrepresentation of a material fact), or 212(a)(9)(B)(i)(II) (unlawful presence) of the Act. As the director did not discuss the basis for finding these grounds of inadmissibility in his previous Form I-192 decision, they should be reviewed on remand.