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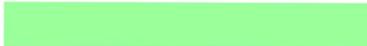
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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. 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; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; and that she was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief and duplicates of evidence previously submitted in the record below.

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 citizen of Mexico who was paroled into the United States on March 21, 2012, with authorization to remain until March 22, 2013. 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 August 13, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On September 23, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity, that she suffered resultant substantial physical or mental abuse, and that she was helpful to the investigation or prosecution of the 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

The Form I-918 Supplement B was signed by Deputy Chief [REDACTED] Chief of Staff, [REDACTED] Police Department, [REDACTED] Washington, (certifying official), on July 31, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "Felonious Assault" and "Attempt to commit any of the named crimes." In Part 3.3, the certifying official referred to the Revised Code of Washington (Wash. Rev. Code) section 9A.36.021(1)(e), assault in the second degree with intent to commit a felony, and section 9A.56.210, robbery in the second degree, as the criminal activities 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 indicated that the petitioner was "accosted by five females. One of the females grabbed [the petitioner's] cellphone from [the petitioner] and ripped three chains off her neck. The female stole these items from [the petitioner]." 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 shaken after the event, but she did not report any physical injury."

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the petitioner has demonstrated that she was the victim of qualifying criminal activity, that she possessed information regarding qualifying criminal activity, and that she was helpful in the investigation or prosecution of qualifying criminal activity. However, she had not established that she suffered resultant substantial physical or mental abuse.

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

The Form I-918 Supplement B indicates that assault with intent to commit a felony and robbery in the second degree were the crimes investigated. The crimes of robbery and assault in the second degree with intent to commit a felony 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 robbery in the second degree or assault with intent to commit a felony 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.

Robbery is defined in Washington as:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

Wash. Rev. Code § 9A.56.190.

A person is guilty of robbery in the second degree if he or she commits robbery. Wash. Rev. Code § 9A.56.210. Robbery in the second degree is a class B felony.

Second degree assault, a felony, is defined as:

- (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:
 - (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or
 - (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child . . . ; or
 - (c) Assaults another with a deadly weapon; or
 - (d) With intent to inflict bodily harm, administers . . . poison or any other destructive or noxious substance; or
 - (e) With intent to commit a felony, assaults another; or
 - (f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or
 - (g) Assaults another by strangulation or suffocation.
- (2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

Wash. Rev. Code § 9A.36.021.

As the criminal activity investigated in this matter has as elements the infliction of substantial bodily injury and aggravating factors such as the use of a deadly weapon and assault by suffocation, and is a felony, it is substantially similar to felonious assault. The petitioner is, therefore, the victim of a felonious assault, which is a qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act and we withdraw the director’s contrary determination.

Substantial Physical or Mental Abuse

When assessing whether substantial physical or mental abuse was suffered as a result of having been a victim of qualifying criminal activity, USCIS looks at factors such as 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. 8 C.F.R. § 214.14(b)(1).

In her declaration, the petitioner stated that on October 27, 2009, she and her sister were walking home from school when they noticed they were being followed by five girls. The petitioner recounted that one of the girls saw her cell phone and grabbed it from her, a girl grabbed the petitioner's necklaces and "yanked" them off the petitioner's neck, and a girl "ripped" a necklace off her sister's neck. The petitioner indicated that the girls ran away before the police arrived, and that she and her sister gave a description of the suspects, and explained what happened. According to the Form I-918 Supplement B, the assailants did not injure the petitioner in the act of grabbing the cell phone from her hand and yanking the chains off her neck.

The petitioner discusses in general terms that as a result of the robbery and assault, she has become fearful of young African Americans, she is afraid to walk alone, she is depressed and anxious, and she has difficulty socializing. In her psychological evaluation, [REDACTED] a licensed mental health counselor, diagnosed the petitioner with having symptoms of post-traumatic stress disorder as a result of the robbery. She states that the robbery exacerbated the petitioner's pre-existing latent depression and feelings of helplessness. [REDACTED] indicates that according to the petitioner, she had a history of child abuse.

Although we do not minimize what the petitioner experienced as a result of the robbery and assault, the overall evidence does not demonstrate that the one incident certified by the [REDACTED] Washington Police Department, resulted in substantial physical or mental abuse under the pertinent definition and relevant factors at 8 C.F.R. §§ 214.14(a)(8); (b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Possession of Information Concerning Qualifying Criminal Activity

The petitioner has established that she possesses information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

The petitioner established that she 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.

Jurisdiction

As the petitioner has established that she was the victim of qualifying criminal activity, and that the qualifying criminal activity occurred in the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

The petitioner has established that she was the victim of a qualifying crime, she possessed information regarding qualifying criminal activity, and that she was helpful in the investigation or prosecution of qualifying criminal activity. However, she has not established that she suffered resultant substantial physical or mental abuse. 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.