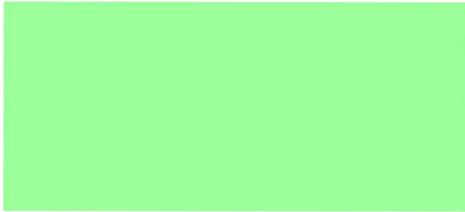




U.S. Citizenship
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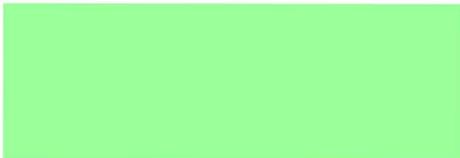


Date: **JAN 02 2015** Office: VERMONT SERVICE CENTER FILE:

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,

for 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 failed to establish that he had suffered substantial physical or mental abuse as a result of his victimization. On appeal, the petitioner submits a brief and a psychological evaluation.

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[.]

As used in section 101(a)(15)(U)(i)(I) of the Act, the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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[.]

* * *

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 Slovakia who entered the United States on December 13, 2001, on a C-1 nonimmigrant visa with authorization to remain until June 11, 2002. 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 April 9, 2013. On January 9, 2014, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of qualifying criminal activity. The director also requested a detailed victim statement. The petitioner responded with a

statement, which the director found insufficient to establish his eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner timely appealed the denial of the Form I-918 U petition. The petitioner states on appeal that he was “severely traumatized” by the crime committed against him and he has established substantial harm.

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.

The Form I-918 Supplement B that the petitioner submitted was signed by Captain [REDACTED] California, Sheriff’s Department (certifying official), on March [REDACTED]. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as false imprisonment and robbery. In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211, 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 stated “see attached report.” The [REDACTED] County Sheriff’s Incident Report submitted by the petitioner indicates that the crime investigated was robbery under Cal. Penal Code § 211. 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 had an “eight inch laceration on right arm.”

In his statement submitted in response to the RFE, the petitioner recounted that on September [REDACTED] he was approached by two men who demanded his wallet and watch. As he was removing his watch, one of the men grabbed the petitioner’s wrist and took his watch, scratching him in the process. They told the petitioner to not “move or turn around,” and they ran off. After several minutes when he was confident that they were gone, the petitioner went to the hospital to be treated for his injury. When he was released from the hospital, he went to the police department to file a report. The petitioner stated that it took him “several months to get over that incident” and he experienced “terrible nightmares” during that time.

In a psychological evaluation dated March 30, 2014, Dr. [REDACTED] a licensed psychologist, states that the petitioner “lives in constant and extreme fear” since the incident, which has resulted in depression and he has “anxiety attacks, insomnia, depression, and severe stress.” His “life is filled with fear and terror,” “he is afraid of everything,” and he has “developed a tremendous case of agoraphobia.” Dr. [REDACTED] diagnosed the petitioner with major depressive disorder, panic disorder, and Post-Traumatic Stress Disorder (PTSD).

Factors relevant to a determination of substantial abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. *See* 8 C.F.R. § 214.14(b)(1). Although the evidence establishes that the petitioner suffered a laceration on his arm and has been diagnosed with major depressive disorder, panic disorder, and PTSD, the Form I-918 Supplement B, the statement from the petitioner, and the psychological evaluation fail to probatively discuss any permanent harm the incident caused to the petitioner’s appearance, health, or physical or mental soundness. The record does not show that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse. The petitioner’s statement submitted in

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response to the RFE indicates that he suffered a traumatic experience when he was robbed that took “several months to get over,” but he provided no further information in his statement regarding ongoing trauma and his statement does not support the findings by Dr. [REDACTED] regarding the seriousness of his mental abuse. In addition, although Dr. [REDACTED] indicates that the petitioner was cut by the suspect’s “big knife” and “was at great risk of losing his life,” the petitioner claims that he “only sustained a scratch” on his arm, which is also supported by the [REDACTED] County Incident Report, and when he went to the hospital, the doctor told him that he “should be okay.” The medical record submitted by the petitioner indicates that he suffered an abrasion/arm laceration, but there is no explanation on how the abrasion occurred and the incident report states that the petitioner was scratched when the suspect grabbed the petitioner’s watch from his hand. While we do not minimize the petitioner’s victimization, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Under the relevant factors described at 8 C.F.R. § 214.14(b)(1), the evidence in the record does not demonstrate that the petitioner suffered substantial abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.

Qualifying Criminal Activity

In addition, although not raised by the acting director in the denial decision, even if the petitioner had established that he had suffered resultant substantial physical or mental abuse, his request for U nonimmigrant status would not be approvable because he has failed to establish that he was the victim of a qualifying crime or criminal activity, which renders him statutorily ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.¹

The Form I-918 Supplement B and incident report from the [REDACTED] County Sheriff’s Department indicate that robbery was investigated. The crime of robbery is not specifically 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. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

In addition, 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. The certifying official’s indication at Part 3.1 that the petitioner was the victim of false imprisonment is without support in the record. The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the incident report noted that the crime investigated was CPC § 211 (robbery). There is no evidence that the certifying agency investigated an attempted or actual

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

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false imprisonment against the petitioner, and the certifying official does not explain why at Part 3.3 he provided a citation for robbery, not false imprisonment under California law, if false imprisonment against the petitioner was actually investigated or prosecuted.² Here, the evidence of record does not demonstrate that the crime of false imprisonment was investigated or prosecuted. As the petitioner has not established that robbery under Cal. Penal Code § 211 is substantially similar to any qualifying crime at section 101(a)(15)(U)(iii) of the Act, and as the Form I-918 Supplement B fails to indicate that qualifying criminal activity was investigated or prosecuted, the petitioner cannot establish that he was the victim of a qualifying crime, 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.

² 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).