



U.S. Citizenship
and Immigration
Services

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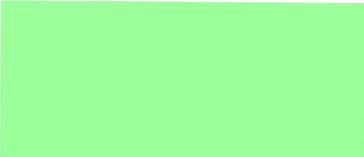


Date: **JAN 21 2015** Office: **VERMONT SERVICE CENTER** FILE:

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 did not establish that: he was the victim of qualifying criminal activity; he suffered resultant substantial physical or mental abuse; he possessed information regarding qualifying criminal activity; or that he was helpful in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner submits a brief, additional evidence and copies of documents already in the record.

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."

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Facts and Procedural History

The petitioner is a native and citizen of Honduras who claims to have entered the United States on March 2, 1996, without admission, inspection 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 26, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On October 29, 2013, the director issued two Requests for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime, that the petitioner suffered resultant substantial physical or mental abuse, and for evidence in support of his Form I-192 waiver application. The director also requested an updated Form I-918 Supplement B. The petitioner responded with an updated Form I-918 Supplement B and 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 was a victim of robbery which is substantially similar to felonious assault, a qualifying crime.

Claimed Criminal Activity

In his affidavits, the petitioner recounted that on May [REDACTED], he was walking to his car from his friend's house when a man ran up to him and punched him in the head three times. The petitioner fell to the ground and the suspect took his wallet, cell phone and a set of keys. The suspect attempted to start the petitioner's car but when was unable to, he ran away. The petitioner then got in his car and drove home. When he arrived home, he called the police to report the robbery and met them at the scene of the incident. The police were unable to apprehend the suspect.

The petitioner submitted two Forms I-918 Supplement B; one at the time of initial filing and one in response to the RFE. The first Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED] Nebraska, Police Department, on January 19, 2012. Detective [REDACTED] listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, Detective [REDACTED] listed an offense code, Robbery 10419, from the incident report but did not list a statutory citation for the criminal activity that was investigated or prosecuted, and at Part 3.5, she indicated that robbery was being investigated or prosecuted. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, Detective [REDACTED] indicated that the petitioner "was punched in the face, knocked to the ground, his wallet and cell phone were stolen." The second Form I-918 Supplement B that the petitioner submitted in response to the RFE was dated November 8, 2013 and signed by Detective [REDACTED] (certifying official), and it contains the same information that was in the first Form I-918 Supplement B.

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.

Robbery under Nebraska Law is not Qualifying Criminal Activity

The Form I-918 Supplement B and incident report from the [REDACTED] Police 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.

Under Nebraska law, “[a] person commits robbery if, with the intent to steal, he forcibly and by violence, or by putting in fear, takes from the person of another any money or personal property of any value whatever.” Neb. Rev. St. § 28-324 (West 2014). In Nebraska, assault in the first and second degree are classified as felonies. Assault in the first degree occurs when serious bodily injury is inflicted (Neb. Rev. St. § 28-308); and assault in the second degree occurs when a dangerous weapon is used, or the person is in legal custody of the Department of Corrections or has been committed as a dangerous sex offender (Neb. Rev. St. § 28-309) (West 2014).

No elements of robbery under Neb. Rev. Stat. § 28-324 are similar to felonious assault under Neb. Rev. Stat. §§ 28-308 or 28-309. The statute investigated in this case involves taking money or personal property from an individual through the use of force or violence, and does not require serious bodily injury or use of a dangerous weapon as a necessary component.¹ The certifying official’s indication at Part 3.1 that the petitioner was the victim of a felonious assault 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 robbery. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the petitioner, and the certifying official does not explain why at Part 3.3 she indicated robbery was investigated, not assault under Nebraska law, if a felonious assault against the petitioner was actually investigated or prosecuted.² 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 evidence of record does not demonstrate that the crime of felony assault was investigated or prosecuted.

On appeal, the petitioner claims that although robbery was investigated, the police report shows that he was assaulted when he was punched in the face and head several times. In addition, assault under Nebraska law

¹ On appeal, the petitioner asserts that USCIS contends that the petitioner must show that the crime investigated is substantially similar to both Neb. Rev. Stat. §§ 28-308 and 28-309. The petitioner must only show that the crime investigated was substantially similar to any type of felonious assault in Nebraska, but as stated, the petitioner has not shown that the elements of robbery under Neb. Rev. Stat. § 28-324 are substantially similar to felonious assault under either Neb. Rev. Stat. §§ 28-308 or 28-309.

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).

is “a lesser included offense of robbery.” However, as stated above, 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, 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).³ The petitioner has not demonstrated that the nature and elements of Neb. Rev. Stat. § 28.324 (robbery) are substantially similar to Neb. Rev. Stat. §§ 28-308/28-309 (felonious assault) or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. 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 qualifying criminal activity, he has also failed to establish that he 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

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that he 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 did not establish that he was the victim of qualifying criminal activity, he has also failed to establish that 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, as required by section 101(a)(15)(U)(i)(IV) of the Act.

³ The petitioner also asserts that the elements of felonious assault in Nebraska are “unlawful assault coupled with the present ability to injure,” however, the petitioner incorrectly cites the law. *See* Appeal Brief at 5 (citing *State v. Williams*, 243 Neb. 959 (Neb.1993)). The full citation indicates that for an “*assault with intent to do great bodily injury* there must be unlawful assault coupled with the present ability and intent to injure.” *Williams*, 243 Neb. at 963 (emphasis added). As stated above, in Nebraska, for an assault to rise to the level of a felony, the assault must include an aggravating factor such as the infliction of serious bodily injury or the use of a dangerous weapon. *See* Neb. Rev. Stat. §§ 28-308/28-309.

Conclusion

The petitioner has failed to establish that he was the victim of a qualifying crime. 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.