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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 3 1 2015

FILE #:
PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, finding that the petitioner did not establish that he has been the victim of a qualifying criminal activity. As a consequence, the director also found the petitioner cannot meet the remaining statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. The petitioner filed a timely appeal.

Applicable Law

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification that:

> (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 --
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> (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
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> (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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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." 8 C.F.R. § 214.14(a)(9).

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.

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 last entered the United States without inspection on December 1, 2000. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 petition) with an accompanying U Nonimmigrant Status Certification (Form I-918, Supplement B) on June 27, 2013. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The director subsequently issued a Request for Evidence (RFE) for, among other documents, evidence that the petitioner was the victim of a qualifying criminal activity, that he suffered resultant substantial physical or mental abuse as a result of that criminal activity, and that the individual that signed the Form I-918 Supplement B is recognized as a certifying official. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 petition and the Form I-192 application. The petitioner timely appealed the denial of the Form I-918 petition.

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, and the brief and supplemental evidence on appeal, the petitioner has not overcome the director's decision to deny the petitioner's Form I-918 petition.

Certified Criminal Activity

The initial Form I-918, Supplement B was signed by Lieutenant Juvenile Investigations, Police Department, Minnesota, on February 25, 2013. The director subsequently issued an RFE for evidence that Lieutenant was recognized as a certifying official. In response, the petitioner submitted a new Form I-918 Supplement B signed by , Commander Violent Crimes Investigation Division, Minnesota, on August 7, 2014. In addition, the petitioner submitted a copy of a letter from Chief of the Police Department stating that Commander is the designated certifying official for the Police Department.[1] This Form I-918 Supplement B listed the criminal activity of which the petitioner was a victim at Part 3.1 as "Felonious Assault," "Simple Robbery," and "Related Crime(s)." In Part 3.3, Commander cited Minn. Stat. §§ 609.24 (simple robbery) and 609.245 (aggravated robbery) as the criminal activities that were investigated or prosecuted.

[1]The letter from Chief did not mention Lieutenant and indicated only that Commander was the "person in a supervisory role" that was "tasked with issuing U nonimmigrant status certifications."

Analysis

"Simple robbery" and "aggravated robbery" under Minnesota law were the crimes certified by Commander as having been investigated or prosecuted. Although these crimes are not specifically listed as qualifying criminal activities at section 101(a)(15)(U)(iii) of the Act, the statute also provides for any "similar activity" to the listed qualifying criminal activities. 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). To show that he was the victim of criminal activity that is substantially similar to felonious assault, the petitioner must demonstrate that the nature and elements of the certified criminal activity, simple robbery and aggravated robbery under Minnesota law, are substantially similar to felonious assault. The inquiry, therefore, is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question.

Simple Robbery under Minnesota Law is not Substantially Similar to a Qualifying Criminal Activity

A felonious assault occurs under Minnesota law when a perpetrator inflicts great bodily injury or uses a deadly force against a protected class (Minn. Stat. Ann. § 609.221), uses a dangerous weapon (Minn. Stat. Ann. § 609.222), inflicts substantial bodily injury (Minn. Stat. Ann. § 609.223), or commits an offense that inflicts demonstrable bodily harm against a protected class (Minn. Stat. Ann. §§ 609.2231).

In contrast, under Minnesota law, simple robbery is committed when an individual "takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance." Minn. Stat. § 609.24. Simple robbery does not require elements substantially similar to a felonious assault under Minnesota law such as force which produces great or substantial bodily injury, or use of a deadly weapon. "Mere force" is sufficient to commit simple robbery. *State v. Burrell*, 506 N.W.2d 34, 37 (Minn. Ct. App. 1993).

Although the petitioner argues that the perpetrator threatened him with "a shiny/silvery object in his hand," and "forcefully ripped off" the pendant that was on the necklace around the petitioner's neck, we must analyze the nature and elements of the certified crime rather than the facts underlying the incident. *See* 8 C.F.R. § 214.14(a)(9). The petitioner has not established that the nature and elements of simple robbery are substantially similar to the qualifying criminal activity of felonious assault under Minnesota law.

Aggravated Robbery under Minnesota Law is not Substantially Similar to a Qualifying Criminal Activity

Aggravated robbery under Minn. Stat. § 609.245 states that:

> Subdivision 1. First degree. Whoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is

> guilty of aggravated robbery in the first degree and may be sentenced to imprisonment for not more than 20 years . . .
>
> Subd. 2. Second degree. Whoever, while committing a robbery, implies, by word or act, possession of a dangerous weapon, is guilty of aggravated robbery in the second degree and may be sentenced to imprisonment for not more than 15 years . . .

The certifying official has generally referenced all of Minn. Stat. § 609.245 rather than identifying which specific subdivision of the aggravated robbery statute was investigated or prosecuted.[2] Therefore, even if the petitioner could establish that one of the subdivisions contained elements substantially similar to felonious assault, the certifying official has not specifically identified which section of the subdivision was actually investigated or prosecuted. Regardless, although subdivision 1 of Minn. Stat. § 609.245 contains the elements of use of a dangerous weapon or a similar article, which are substantially similar to felonious assault under Minnesota law, it may also be satisfied without use of dangerous weapon if the victim is lead to believe it is a weapon. This subsection also contains the element of the infliction of "bodily harm" which is not substantially similar to the infliction of "great" or "substantial" bodily harm" as required for felonious assault under Minnesota law. Further, the only required element under subdivision 2 is the implication of the possession of a dangerious weapon, rather than actual use. Accordingly, the petitioner has not established that the nature and elements of the certified crime of aggravated robbery are substantially similar to felonious assault or any of the other qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

On appeal, the petitioner cites two non-precedent decisions involving our prior analysis of a robbery statute in Texas and a California statute involving an assault carried out in the commission of a robbery; these cited statutes and crimes are not the same criminal state statutes as being analyzed in the instant proceeding. Moreover, although 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, non-precedent decisions are not similarly binding.

The petitioner has not established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

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

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[2] The police report does not indicate that the certifying official or any other law enforcement entity investigated aggravated robbery under Minn. Stat. § 609.245. The police report indicates only that the petitioner was the victim of "Robbery of Person" under "609.24."

mental soundness of the victim, including aggravation of pre-existing conditions. 8 C.F.R. § 214.14(b)(1).

On appeal, the petitioner argues that the director ignored not only the "impressive amount of evidence showing the lasting and significant impairment to his emotional and psychological soundness in the form of multiple affidavits, numerous letters from individuals attesting to their personal observations of his behavior, and letters from a therapist . . . " but also the regulation at 8 C.F.R. § 214.14(a)(8) defining "substantial abuse" to include "harm to or impairment of the emotional or psychological soundness of the victim."

In his affidavit submitted below, the petitioner asserted that the perpetrator "forcefully ripped" the pendant off a chain around the petitioner's neck, and threatened to harm the petitioner if he moved. The petitioner claimed that he "was certain the object in [the perpetrator's] hand was a knife or some sort of weapon that [the perpetrator] was going to use to stab or hurt" the petitioner. He stated that he was "completely shocked, trembling, and terrified." The police incident report stated that the perpetrator grabbed a pendant off a chain around the petitioner's neck before running away, and that the petitioner had "a minor scratch on his chest" from the robbery. The police incident report does not indicate that a dangerous weapon (or similar article) was used in the robbery. The petitioner further indicated that in addition to neck and chest pain, he has become nervous and fearful after the robbery and has insomnia, nightmares, and headaches.

The petitioner also submitted affidavits from his friends, neighbors, roommate, and nephew affirming that he had become nervous and fearful as a result of the robbery. He also provided a letter from a licensed associate marriage and family therapist, stating only that she has seen the petitioner for four sessions but offering no diagnosis or treatment discussion. Additionally, he provided a report from the *Journal of Traumatic Stress,* which provides only general information about psychological stress following armed robbery but no information specifically relating to the petitioner.

Although we do not minimize what the petitioner experienced as a result of the robbery, when viewed in comparison to the applicable regulatory factors, which require consideration of the nature, severity, and duration of the conduct and resulting injury, the petitioner has submitted insufficient evidence to demonstrate that he has suffered resultant substantial physical or mental abuse. The petitioner, therefore, has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

Remaining Statutory Provisions

The petitioner did not establish that he was the victim of qualifying criminal activity, and therefore has also not established that he possesses information concerning such a crime or activity; 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; and 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)(II)-(IV) of the Act.

Conclusion

The petitioner has not established by a preponderance of evidence that he was the victim of a qualifying criminal activity and that he suffered resultant substantial physical or mental abuse. He, therefore, also cannot meet the remaining statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Furthermore, the petitioner is inadmissible to the United States and his grounds of inadmissibility have not been waived. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and his petition must be denied.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.