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

(b)(6)

Date: JUN 0 5 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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

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 instant Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner failed to respond to a Request for Evidence (RFE). The petitioner filed a timely motion to reopen, which the director accepted. The director reviewed the additional evidence submitted by the petitioner and denied the petition because the petitioner was inadmissible to the United States and had not submitted a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to have her grounds of inadmissibility waived. The petitioner timely appealed the denial of the motion to reopen. On appeal, the petitioner does not contest her inadmissibility on the stated grounds, and instead, submits a statement that her response to the RFE was not received in a timely fashion because of a failure of the post office.

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[.][1]

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).

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."

Furthermore, section 212(d)(14) of the Act 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 petitioner bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 8 C.F.R § 214.1(a)(3)(i).

For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 waiver in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." The only issue that may come before us is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

[1] 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 Venezuela who claims to have last entered the United States in 2001 pursuant to a valid B-2 visitor's visa. The petitioner filed this Form I-918 U petition on December 26, 2012 indicating that she had been the victim of a battery. On November 4, 2013, the director issued an RFE, notifying the petitioner that she appeared inadmissible to the United States under sections 212(a)(6)(A)(i) (entry without inspection) and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act and requesting evidence to establish that either she was not inadmissible or that she submit a waiver application for the grounds of inadmissibility.[2] The director received no response from the petitioner and denied the petition for abandonment. The petitioner filed a motion to reopen, which the director granted, reviewing the evidence submitted by the petitioner in response to the RFE. The director found the evidence submitted insufficient to establish that the petitioner was not inadmissible, and the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the director's decision on the motion to reopen affirming the denial of the petition.

Analysis

We conduct appellate review on a *de novo* basis. On appeal, the petitioner does not dispute that she is inadmissible to the United States on the stated grounds, but instead asserts that her failure to respond to the RFE was a fault of the U.S. postal service in delivering her submission in a timely fashion. The petitioner also submits a letter, dated December 22, 2014, stating that she has requested a new passport from the Venezuelan Consulate in but had not received any documents in response. However, the director denied the petitioner's application for a waiver of inadmissibility, and the petitioner did not submit evidence to establish her admissibility to the United States. As a result, the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv), a form which the petitioner has never submitted.

Beyond the decision of the director, the petitioner has not established that she has been the victim of qualifying criminal activity; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; that she was helpful in the investigation or prosecution of qualifying criminal activity; or 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.

[2] The petitioner submitted a copy of her passport with an expiration date of May 2, 2005. The petitioner also submitted copy of her Form I-94 demonstrating that she entered the United States lawfully. As a result, section 212(a)(6)(A)(i) would not provide a ground of inadmissibility and was not a basis of the director's decision.

Claimed Criminal Activity

The petitioner stated in a declaration, dated December 1, 2012, that she met a man, M-H-,[3] on public transportation. M-H- came to her apartment twice and the petitioner turned him away. Three months later, M-H- was waiting for the petitioner in the lobby of her apartment building and the petitioner saw him two more times on a nearby college campus. M-H- began renting a room in the same building as the petitioner. On 2002, the petitioner states that M-H- had a "violent incident" towards her in a hospital. In a supplement to the police report, the petitioner stated that M-H- was constantly involving himself in her affairs. On 2002, the petitioner stated that M-H- involved himself in a discussion the petitioner was having with another neighbor about food in the refrigerator. She stated that M-H- began screaming at her, pushed her against the wall, and was pointing his finger in her face. Due to his actions, she became scared and spat in M-H-'s face, which he responded to by slapping her. The petitioner's mother attempted to intervene, but M-H- pushed her away and she fell to the floor.

The Form I-918 Supplement B is signed by Chief of the Illinois Police Department (certifying official), on November 19, 2012. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as "other: battery." In Part 3.3, the certifying official refers to Illinois Compiled Statutes (ILCS) § 12-3, misdemeanor battery, 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 indicated that the petitioner was "a victim of a battery." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated that the petitioner was slapped and pushed and that she spat on the assailant.

Battery under Illinois Law is not Substantially Similar to a Qualifying Crime or Criminal Activity

The Illinois Police Department Crime Report indicates that the responding officer consulted with the assistant state's attorney who stated that a battery charge would be most appropriate for the incident occurring on 2002. M-H- was charged with battery and told to avoid any further contact with the petitioner. The crime of battery 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 battery 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 the ILCS, "[a] person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS § 5/12-3 (West 2013). Illinois law provides than an assault occurs when a person "without lawful authority, . . . knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS § 5/12-1. Aggravated

[3] Name is redacted to protect privacy.

assault is defined as an assault that occurs using a weapon, or against a specially protected class of person, such as a corrections officer, a police officer, or a State employee acting within the scope of his or her employ. 720 ILCS § 5/12-2.

The elements of battery under 720 ILCS § 5/12-3 do not include the mitigating, aggravating factors found in 720 ILCS § 5/12-2 to make battery substantially similar to felonious assault. In addition, the ILCS specifically provides for the crime of aggravated battery under 720 ILCS § 5/12-3.05. The statute investigated in this case involves committing harm or otherwise making contact of an insulting or provoking nature against a person. Felonious assault, however, involves conduct that places another in reasonable fear of harm from a deadly weapon. The certifying official did not indicate on the Form I-918 Supplement B that the petitioner was a victim of felonious assault or that the certifying agency investigated a felonious assault against the petitioner arising from the certified incident. There is also no mention on the Form I-918 Supplement B or in the police report of any aggravating factor to indicate that a felonious assault occurred. The petitioner has not shown that any crime other than battery was investigated or prosecuted by the certifying agency.

Here, the evidence in the record and the petitioner's contentions fail to establish that the criminal offense of which the petitioner was a victim, battery, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The petitioner is, therefore, not the victim of a qualifying crime or any 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 she was the victim of qualifying criminal activity, she has also failed to establish that she 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as required by subsection 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 she was the victim of a qualifying crime or criminal activity, she has also failed to establish 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 did not establish that she was the victim of qualifying criminal activity, she 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.

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). The petitioner has not established that she is admissible to the United States or that her grounds of inadmissibility have been waived. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

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