



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 11 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:

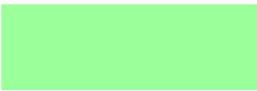
INSTRUCTIONS:

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: 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 and additional evidence.

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

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 explained 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 native and citizen of Trinidad and Tobago who entered the United States on August 27, 2004, on a B-2 nonimmigrant visa with authorization to remain until February 26, 2005. 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 November 2, 2012. On October 24, 2013, the director issued a Request for Evidence (RFE) for the petitioner to establish, in part, that the crime listed on the law enforcement certification was a qualifying crime. 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. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner claims that he is a victim of felonious assault and attempt to commit a felonious assault, a qualifying crime, because a classmate placed him on a "death list" of students he planned to kill. He states that although the crime ultimately charged and prosecuted was disorderly conduct, the crime investigated was actually "criminal threat," a felony under Kansas law, that is substantially similar to felonious assault.

Claimed Criminal Activity

In his statement, the petitioner recounted that he was sitting at a table, talking with other sixth graders, when one of his friends began saying that he hated everyone. The classmate then said he wanted to kill everyone and had access to a gun that he could use whenever he wanted. The petitioner wrote down names of the people that his classmate said he wanted to kill and warned those students about the statements made by his classmate. Eventually, word reached the school administration and the principal called the petitioner into the office. The petitioner turned over the list of names he transcribed to the principal and the police were notified. The petitioner stated that his classmate began staring at him in class and stopping in front of his house, always carrying a bat, stick, wooden sword, or other implement. He stated that he was scared to go outside, but that he was glad he reported the incident and the school year ended "with the best field day [he] could possibly hope for" with his friends.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] Chief Deputy District Attorney with the [REDACTED] District Attorney's Office [REDACTED] Kansas (certifying official), on September 20, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "other: disorderly conduct." In Part 3.3, the certifying official referred to Kansas Statutes Annotated (K.S.A.) § 21-3419, criminal threat, 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 informed school authorities that his classmate had a "death list," that the petitioner's name was on it, and that the petitioner's classmate was going to buy a gun when he is old enough so that he could kill people. Mr. [REDACTED] also stated that the petitioner told the police that his classmate did not refer to the list as a "death list," but instead constituted a list of people who were bullying him. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that "no injury" was sustained.

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.

Criminal Threat under Kansas Law is not Qualifying Criminal Activity

The incident/investigation report indicates that the offense investigated was criminal threat under K.S.A. § 21-3419. The crime of criminal threat 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 crime investigated, criminal threat, 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 Kansas law,

(a) A criminal threat is any threat to:

- (1) Commit violence communicated with intent to terrorize another, or to cause the evacuation, lock down or disruption in regular, ongoing activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such terror or evacuation, lock down or disruption in regular, ongoing activities;
- (2) Adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) Expose any animal in this state to any contagious or infectious disease.

(b) A criminal threat is a severity level 9, person felony.

(c) As used in this section, “threat” includes any statement that one has committed any action described by subsection (a)(1) or (2).

K.S.A. § 21-3419. In Kansas, aggravated or felonious assault is the addition of aggravating factors of use of “a deadly weapon; while disguised in any manner designed to conceal identity; or with intent to commit any felony” to the definition of simple assault found in K.S.A. § 21-3408, which is intentionally placing another person in reasonable apprehension of immediate bodily harm. K.S.A. § 21-3410(a)-(c).

On appeal, the petitioner states that criminal threat involves substantially similar elements of intent and action to the crime of assault under Kansas law. Specifically, the petitioner notes that threatening to commit violence against a person with the intent to terrorize that person, which is the nature of a criminal threat, is substantially similar to placing a person in reasonable apprehension of immediate bodily harm, which is the component of the Kansas assault statutes. The two statutes are not, however, substantially similar because assault involves bodily harm, whereas a criminal threat is a statement of intent to commit violence against another or to cause a disruption in a public gathering place, such as a school, and does not require apprehension of immediate bodily harm through use of a deadly weapon, while disguised, or during the attempt to commit another felony. The petitioner’s claim that criminal threat becomes akin to aggravated assault when the threat is committed in conjunction with a felony is without merit, as the nature and elements of the criminal threat statute under Kansas law remain unchanged regardless of whether another crime is committed at the same time as the threat.

As discussed above, felonious assault in Kansas involves an assault with one of the aggravating factors named above. The certifying official did not indicate that an attempted or actual felonious assault was investigated or prosecuted, and the crime of criminal threat is not substantially similar to assault, either simple or felonious. The petitioner has not demonstrated that the elements of criminal threat are substantially similar to the aggravating factors found in K.S.A. § 21-3410 (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 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 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.

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.

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