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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

[Redacted]

Date: **MAR 17 2015** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: PETITIONER: [Redacted]

APPLICATION: 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:

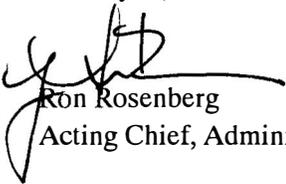
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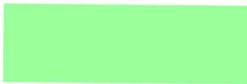
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting 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.

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 she has been the victim 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: 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.

“The term ‘any similar activity’ 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 regulation at 8 C.F.R. § 214.14(a)(14) states that the term *victim of qualifying criminal activity* “generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.”

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 Brazil who initially entered the United States on June 25, 2002 pursuant to a B-2 visitor’s visa. She departed the United States on August 14, 2007 and returned on May 18, 2011. The petitioner filed the instant I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on June 12, 2013. On February 5, 2014, the director issued a Request for Evidence (RFE) requesting that the petitioner submit additional evidence to establish that in California, a crime of battery is substantially similar to a qualifying crime listed in section 101(a)(15)(U)(iii) of the Act and that she suffered substantial physical or mental abuse as a result of the qualifying criminal activity. The petitioner responded to the RFE with statements and additional evidence, which the director found insufficient to establish the petitioner’s eligibility. Accordingly, the director denied the petition and the petitioner’s Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner states that in California, the crime of battery is substantially similar to the qualifying crime of felonious assault and that additional crimes may have been investigated in addition to the charged crime of battery. The petitioner suggests that additional crimes could have been investigated including aggravated assault, false imprisonment, and grand theft. She states that she would submit a new Form I-918 Supplement B on appeal, but to date, none has been received. Even if a new Form I-918 Supplement B had been submitted on appeal, the regulation at 8 C.F.R. § 214.14(c)(2)(i) states that the Form I-918 Supplement B is required initial evidence and must be submitted with the original filing. As a result, we would be unable to consider any new Form I-918 Supplement B submitted on appeal.

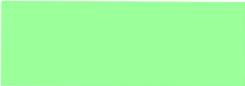
Claimed Criminal Activity

The Form I-918 Supplement B is signed by [REDACTED] M.S.W., [REDACTED] California Police Department (certifying official), on May 29, 2013. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault. In Part 3.3, the certifying official refers to California Penal Code (CPC) § 242, 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, she indicated that the petitioner was “punched several times on the face and head area with a closed fist” and that the punching continued after the petitioner fell to the ground. She also indicated that the petitioner’s money was stolen by another individual during the incident. 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 relayed that she had discoloration and swelling of her face and had headaches.

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

The [REDACTED] California Police Department Crime Report indicates that the suspect was issued a citation for battery and that grand theft and challenging to fight charges were recommended against a second individual for taking the petitioner’s money from her pocket during the incident. 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 CPC, “[a] battery is any willful and unlawful use of force or violence upon the person of another.” Cal. Penal Code § 242 (West 2013). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2013). Assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:



(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

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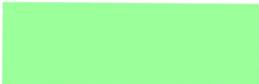
(4) Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245 (West 2013).

The elements of battery under C.P.C. § 243 do not include the mitigating, aggravating factors found in C.P.C. § 245 to make battery substantially similar to felonious assault. The statute investigated in this case involves the use of force or violence against a person. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of felonious assault, she presented no evidence that she or any other law enforcement entity investigated or that there is any intent to investigate felonious assault. 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. There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. The petitioner has not shown that any crime other than battery was investigated or prosecuted by the law enforcement agency.

On appeal, the petitioner states that battery in violation of CPC § 242 is similar to felonious assault, because the assailant in this case knocked the petitioner to the ground and then continued to punch her. As stated above, 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). The petitioner has not demonstrated that the nature and elements of the criminal offense of which she was a victim, battery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault.

In addition, the petitioner states that additional charges may have been appropriate including false imprisonment and grand larceny. Whether certain crimes “may” have been charged based on the facts presented is not relevant to the instant analysis. It appears that another suspect was charged with grand larceny after his removal of money from the petitioner’s pocket when she was on the ground during the battery, but the petitioner presented no evidence to demonstrate how grand larceny is substantially similar to one of the qualifying crimes. The petitioner also



states that false imprisonment might have been charged in her case because she was compelled to remain on the ground during the battery. Although false imprisonment is one of the specified qualifying crimes, there is no evidence that the certifying agency investigated an attempted or actual false imprisonment against the petitioner, and the certifying official does not state at Part 3.3 that false imprisonment against the petitioner was actually investigated or prosecuted. Without such a statement as part of the Form I-918 Supplement B, we are unable to conclude that the petitioner was the victim of the qualifying crime of false imprisonment as required by section 101(a)(15)(U)(i) of the Act.

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.

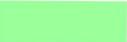
Possession of Information Concerning Qualifying Criminal Activity

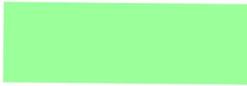
As the petitioner did not establish that she was the victim of a qualifying crime or criminal activity, she has also failed to establish that she possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

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.

Conclusion

Although the petitioner was helpful to the  California Police Department in the investigation of the battery outside of summer school, she has not demonstrated that the offense of battery under CPC § 242 is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Accordingly, the petitioner has not demonstrated that: (1) she was a victim of qualifying criminal activity; (2) she suffered



substantial physical or mental abuse as a result of having been such a victim, as required by subsection 101(a)(15)(U)(i)(I) of the Act; (3) she possesses information concerning the qualifying crime or criminal activity upon which her petition is based; and (4) she has been, is being, or is likely to be helpful to a federal, state, or local law enforcement authorities, prosecutor, judge or other federal state, or local authorities investigating or prosecuting the qualifying criminal activity, as required by subsection 101(a)(15)(U)(i)(III) of the Act. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.