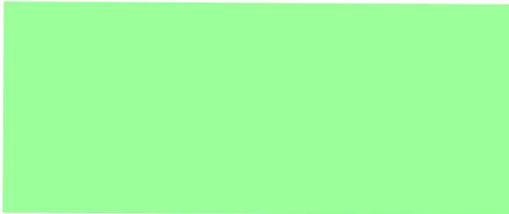




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 19 2015**

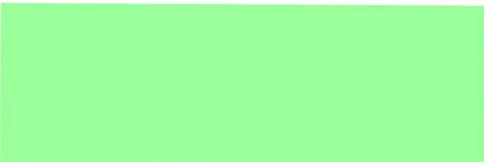
Office: VERMONT SERVICE CENTER

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The decision dismissing the appeal shall be affirmed and the underlying 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 or that he had suffered resultant substantial physical or mental abuse.<sup>1</sup> The petitioner filed an appeal which we summarily dismissed because the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner filed a motion to reopen and reconsider our decision and submitted additional evidence.

On motion, the petitioner claims that he suffered substantial physical and mental abuse as a result of being a victim of robbery, which is substantially similar to felonious assault. In support of his claim, the petitioner submits a brief and additional evidence. As the petitioner has submitted new facts supported by documentary evidence, the motion to reopen will be granted. *See* 8 C.F.R. § 103.5(a)(2).

*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.

<sup>1</sup> The director also noted that the petitioner did not establish that the criminal activity violated the laws of the United States or occurred in the United States, but she did not provide any analysis for denying the petition on that basis.

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).

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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[.]

\* \* \*

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 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 Mexico who claims to have initially entered the United States in April, 1995, 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 May 8, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On June 18, 2013, the director issued a Request for Evidence (RFE) that the crime listed on the law enforcement certification was a qualifying crime. The director also requested two passport-style photos of the petitioner. 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 and Form I-192. The petitioner appealed the denial of the Form I-918 U petition which we summarily dismissed. The petitioner timely filed a motion to reopen and reconsider our decision and claims that he has suffered substantial physical or mental abuse as a result of being the victim of qualifying criminal activity.

### *Claimed Criminal Activity*

In his declaration, the petitioner recounted that on December 3, 2003, he and others, including the suspect, were invited to a friend's house for dinner. During the evening, the suspect attacked the petitioner and pulled off the petitioner's necklace. The suspect then fled and the petitioner ran after him. While chasing the suspect, a police officer drove by and took the petitioner to the police station to file a report. While at the police station, the suspect called the petitioner and told him that if he "reported the incident with the cops he was going to harm [the petitioner and his family]." The police were unable to locate the suspect.

The Form I-918 Supplement B that the petitioner submitted was signed by Acting Police Chief [REDACTED] Washington, Police Department (certifying official), on April 24, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as robbery in the second degree. In Part 3.3, the certifying official referred to the Revised Code of Washington (R.C.W.) § 9A.56.210, robbery in the second degree, 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 robbery in the 2nd degree." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "was mentally and emotionally abused."

### *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.

### Victim of 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.

Robbery under the Revised Code of Washington occurs when a person “unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone.” Wash. Rev. Code § 9A.56.190 (West 2015). “A person is guilty of robbery in the second degree if he or she commits robbery.” Wash. Rev. Code § 9A.56.210 (West 2015). Assault is not defined by Washington law, so Washington courts apply the common-law definition of assault in criminal cases. *Clark v. Baines*, 84 P.3d 245, 247 n.3 (Wash. 2004). Three common law definitions of criminal assault are recognized in Washington: “(1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.” *Id.* (quoting *State v. Walden*, 841 P.2d 81, 83 (Wash. Ct. App. 1992)). Under the Model Penal Code, “[a] person is guilty of aggravated assault if he: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.” Model Penal Code § 211.1(2) (West 2015).

No elements of robbery under Wash. Rev. Code §§ 9A.56.190 and 9A.56.210 are similar to felonious assault under the Model Penal Code or the Washington Criminal Code.<sup>2</sup> The statute investigated in this case involves taking personal property from an individual through the use of force, violence, or fear, and does not specify the commission of bodily injury to another person. Felonious assault under the Model Penal Code, however, involves causing or attempting to cause bodily injury to another or causing bodily injury to another with a deadly weapon. Therefore, the offenses are not substantially similar.

We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. 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 was R.C.W. § 9A.56.210 (robbery). There is no evidence that the certifying agency investigated an attempted or actual felonious assault or any other qualifying crime. The petitioner has not shown that any crime other than robbery was investigated by the law enforcement agency.

In support of his motion, the petitioner claims that the facts of his case “meet the definition of assault under Washington State law” and that the case “could have been charged” under Washington’s felonious assault statutes. However, 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

<sup>2</sup> Felonious assault under the Washington Criminal Code is similar to the Model Penal Code in that it involves an assault with a deadly weapon or that causes bodily injury. See Wash. Rev. Code Ann. §§ 9A.36.011 and 9A.36.021 (West 2015). Felonious assault in Washington also includes assault against certain protected classes and assault with intent to commit a felony. Wash. Rev. Code Ann. §§ 9A.36.021 and 9A.36.031 (West 2015).

qualifying crimes.<sup>3</sup> See 8 C.F.R. § 214.14(a)(9). The petitioner has not shown that a qualifying crime was investigated by the law enforcement agency, or that the crime investigated is substantially similar to any qualifying criminal activity, including felonious assault. 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 and Remaining Eligibility Criteria

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. The petitioner's failure to establish that he was the victim of qualifying criminal activity also prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (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 ●tiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion is granted. The appeal remains dismissed and the petition remains denied.

<sup>3</sup> On motion, the petitioner compares the elements of robbery to those of common law assault, however, "assault" is not listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act; the assault must be "felonious assault" to qualify. The petitioner does not compare the elements of robbery in the second degree to those of any felonious assault statute.