



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date:

**MAY 07 2015**

FILE #:

PETITION RECEIPT #:

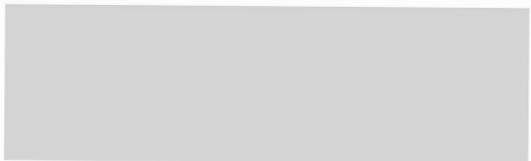
IN RE:

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:



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](http://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 because the petitioner did not establish that: she was 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. On appeal, the petitioner submits a brief.

*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 Mexico who last entered the United States on July 20, 2004, without inspection, authorization, 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 April 8, 2013. On December 23, 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 she is a victim of felonious assault and attempt to commit a felonious assault, a qualifying crime, because her husband's ex-girlfriend broke into the apartment where she was sleeping and threw objects at her and threatened her. She states that the actions of the ex-girlfriend amount to terroristic threats and assault in the second degree, both felonies, and that those actions qualify her for eligibility for U nonimmigrant classification.

#### *Claimed Criminal Activity*

In her statement, the petitioner recounted that she and her husband had taken a break from their relationship and her husband began dating another woman. In February 2010, the parties decided to reconcile and her husband ended the relationship with the other woman. That night, the other woman broke into the apartment where the petitioner and her husband were sleeping and began yelling at the petitioner and her husband, demanding to know what was going on. The petitioner's husband moved the other woman out of the bedroom and closed the door; the woman scratched and slapped him on the way out. With the door closed, the woman began knocking on the door and then began throwing objects at the door while also hurling insults at the petitioner's husband. After the woman was quiet for awhile, the petitioner's husband opened the door to see if she was gone. The woman again began yelling and insulting him. Since the bedroom door was open, the woman could see the petitioner and threw a lamp at her, which missed. The woman then threw a can of food at the

petitioner, which hit her in the shoulder. The woman was screaming “I’m going to kill you” throughout. The petitioner’s husband went to the telephone in the kitchen to call the police, at which time, the woman left the apartment.

The Form I-918 Supplement B that the petitioner submitted was signed by Captain [REDACTED] with the [REDACTED] Minnesota Police Department (certifying official), on October 15, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault, attempt to commit felonious assault, and “related crime(s).” In Part 3.3, the certifying official referred to Minnesota statutes §§ 609.595 (vandalism) and 609.224(2) (assault in the fifth degree – gross misdemeanor) as the criminal activity that was investigated or prosecuted. At Part 4.5, the certifying official also listed Minn. Stat. Ann. §§ 609.713 (terroristic threats), 609.605.1(b)(4) (trespassing), and 609.72.1 (disorderly conduct) as statutes relating to the criminal activity and stated that Minn. Stat. § 609.222 (assault in the second degree) applied to the woman throwing a lamp at the petitioner. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that a woman trespassed into the apartment of her ex-boyfriend where an argument broke out and during which the woman stated that she was “going to kill” the petitioner. The certifying official further states that the woman threw a lamp at the petitioner and a glass kitchen table at the bedroom door. 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 transported to the emergency room via ambulance because of shortness of breath and chest pains and that the petitioner “sustained emotional trauma, requiring counseling.”

### *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.

### Terroristic Threat, Vandalism, and Gross Misdemeanor Assault under Minnesota Law are not Qualifying Criminal Activities

The incident/investigation report indicates that the offense investigated was Minn. Stat. Ann. §§ 609.595 (vandalism) and 609.224(2) (assault in the fifth degree – gross misdemeanor). The crimes of vandalism and misdemeanor assault are not specifically listed as qualifying crimes 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 crimes investigated, vandalism and misdemeanor assault, 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 Minnesota law, vandalism is defined as intentionally causing damage to another person’s physical property without the other person’s consent. Minn. Stat. Ann. § 609.595. Assault under Minn. Stat. Ann. § 609.224 is defined as “commit[ing] an act with intent to cause fear in another of

immediate bodily harm or death; or intentionally inflict[ing] or attempt[ing] to inflict bodily harm upon another. . . within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.” In Minnesota, aggravated or felonious assault is defined as an assault involving great bodily harm, an assault against protected classes, using a dangerous weapon, or an assault with the imposition of substantial bodily harm. Minn. Stat. Ann. §§ 609.221-223.

On appeal the petitioner does not assert that either vandalism or gross misdemeanor assault is substantially similar to one of the qualifying criminal activities in the statutorily enumerated list, but instead states that other crimes could apply to the situation that resulted in the police investigation. The petitioner notes that the certifying official stated that additional charges may be applicable to the criminal activity, specifically Minn. Stat. Ann. §§ 609.713 (terroristic threats), 609.605.1(b)(4) (trespassing), 609.72.1 (disorderly conduct), and 609.222 (assault in the second degree) in Part 4.5 of the Supplement B. The petitioner specifically asserts that the statutes criminalizing terroristic threats and assault in the second degree amount to qualifying criminal activity under the Act.

Minnesota Statute § 609.713 criminalizes direct and indirect threats to commit a crime of violence with the purpose of terrorizing another person. The statute specifies that a “crime of violence” includes assault in the second degree (assault involving a dangerous weapon). The petitioner states that the woman’s act in throwing a lamp constitutes an assault in the second degree as the lamp was used in a manner or intended to cause great bodily injury. *See* Minn. Stat. Ann. § 609.02(6). Although a lamp is not inherently a dangerous weapon, the Minnesota courts have held that ordinary objects can be transformed into dangerous weapons. *State v. Trott*, 338 N.W.2d 248, 252 (Minn.1983). To qualify as a dangerous weapon, the object must be used in a manner calculated to cause great bodily harm. *See, e.g., id.* (three-foot-long board is dangerous weapon when used to repeatedly beat victim); *State v. Moyer*, 298 N.W.2d 768, 770 (Minn.1980) (gasoline is dangerous weapon when intentionally poured and lit in sole exit of apartment in attempt to kill occupants); *State v. Mings*, 289 N.W.2d 497, 498 (Minn.1980) (boot is dangerous weapon when used to kick victim repeatedly in head and chest).

The petitioner is correct that assault in the second degree under Minnesota law is substantially similar to felonious assault, one of the statutorily enumerated crimes under the Act. The evidence in the record, however, does not indicate that such a crime was detected or investigated. The Form I-918 Supplement B indicates that only vandalism and gross misdemeanor assault were investigated or prosecuted by the certifying agency.<sup>1</sup> The police report in the record similarly lists only the two offenses as those considered by the [REDACTED] Police Department when called to the scene. The [REDACTED] Criminal court records indicate that the charges filed were for trespass, damage to property, and disorderly conduct. Although the certifying official stated on the Supplement B that the actions of the woman might legally constitute assault in the second degree, the certifying official did not indicate that any crime beyond vandalism and gross misdemeanor assault was investigated or prosecuted during the time the investigation was open by the certifying agency. The petitioner has not demonstrated that the elements of vandalism or gross misdemeanor assault are substantially

<sup>1</sup> We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4).

similar to the aggravating factors found in Minn. Stat. Ann. §§ 609.221-224. (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 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 qualifying criminal activity, she has also failed to establish that she 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 she was the victim of qualifying 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*

The petitioner has failed to establish that she was the victim of a qualifying crime. She 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.