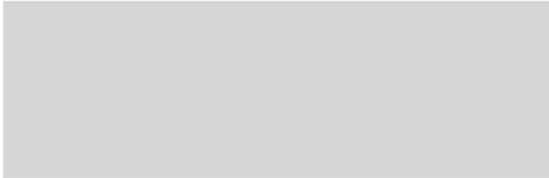




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 18 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

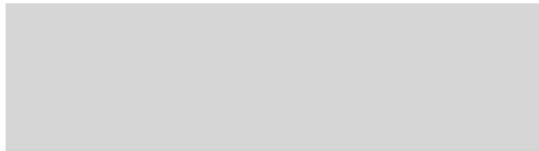
IN RE:

Petitioner: [REDACTED]

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) 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: 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.”

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;

(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

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.

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 claims to have entered the United States in 1998 without inspection, admission, 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 February 26, 2013. On November 26, 2013, the director issued a Request for Evidence (RFE), 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 filed a motion to reopen the director's decision, which was granted by the director but the petition remained denied. The petitioner timely appealed this decision. On appeal, the petitioner claims that she suffered substantial injury as a result of an assault, which was a severe enough attack to qualify as a felony assault and establish her eligibility for U nonimmigrant status.

Claimed Criminal Activity

In her declaration, the petitioner stated that on November 23, 2008, she was out with her brother and a couple of friends when a man who had wanted to date her appeared. The man began following the petitioner and then started insulting her. The petitioner's brother told the man to leave his sister alone. The man hit the petitioner's brother and the petitioner tried to intervene, but was pushed down to the pavement. When she fell, she hit her head on the cement. The man's sister arrived and

joined in the altercation, hitting the petitioner on her face around her eyes. One of the petitioner's friends called the police after the assailants departed.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] head of the Domestic Abuse Unit of the [REDACTED] Minnesota City Attorney's Office (certifying official) on August 13, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as "other: 5th Degree Assault." In Part 3.3, the certifying official referred to Minnesota Statute § 609.224(1) as the criminal activity investigated or prosecuted. In Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that as the petitioner "was walking to her car, she was jumped from behind by assailant. [The petitioner] was punched in the face and pushed down to the ground." The certifying official stated in Part 3.6 that the petitioner was punched in the face and pushed down to the ground and had a large bump just below her right eye.

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.

All Assault under Minnesota Law is not Qualifying Criminal Activity

The [REDACTED] Minnesota Police Department report indicates that the offense investigated and charged was assault in the fifth degree. The crime of felonious assault is 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, 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, misdemeanor assault is defined as committing "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." Minn. Stat. Ann. § 609.224(1) (West 2014). An 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.

Felonious assault in Minnesota involves an assault with one of the aggravating factors named above. The certifying official did not indicate on the Form I-918 Supplement B that an attempted or actual felonious assault was investigated or prosecuted. Instead, the certifying official indicated that misdemeanor assault was investigated and prosecuted, specifying Minn. Stat. Ann. § 609.224(1) at Part 3.3. The Act specifies that felonious assault is qualifying criminal activity, not misdemeanor assault. On appeal, the petitioner states that because she sustained substantial bodily harm, the assault committed by the man should be considered a felony assault under Minn. Stat. Ann. § 609.223. She further urges us not to limit our inquiry to the State prosecutor's or police's criminal

charging decisions as such decisions are outside of the control of victims. The proper inquiry is not an analysis of the factual details underlying the criminal activity to see what crime could have been investigated or prosecuted by the certifying agency, but a comparison of the nature and elements of the crime that was actually investigated and one of the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). The certifying official identified only misdemeanor assault as the crime investigated or prosecuted. The petitioner submitted no statutory analysis to demonstrate that misdemeanor assault under Minn. Stat. Ann. § 609.224(1) is substantially similar to the nature and elements of felonious assault as found in Minn. Stat. Ann. § 609.221-223. As the record does not demonstrate that the crime of felonious assault was investigated or prosecuted, the petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner has not established that she was the victim of qualifying criminal activity, she has also failed to demonstrate 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 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.

Possesses Information and Helpfulness to Law Enforcement

As the petitioner did not establish that she was the victim of qualifying criminal activity, she 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 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.

The Form I-918 Supplement B

There is an additional ground of ineligibility not raised by the director about which we hereby put the petitioner on notice. The regulations require that the law enforcement certification be included with the filing of the Form I-918 U petition and be “signed by a certifying official within the six months immediately preceding the filing of Form I 918.” See 8 C.F.R. § 214.14(c)(2)(i). The

condition that the Form I-918 Supplement B must be signed within the six month period before the filing date of the Form I-918 U petition was set by USCIS “to seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007). “USCIS believes that this requirement provides petitioners enough time to prepare the necessary paperwork for the petition package, while also precluding the situation where petitioners delay filing the package until sometime after the certification is signed, and they cease to be helpful to the certifying agency.” *Id.*

The Form I-918 Supplement B in the record was signed on August 13, 2012. The Form I-918 U petition was filed on February 26, 2013, which is six months and 13 days after the Form I-918 Supplement B was signed. The petitioner must meet the statutory and regulatory requirements, as we lack authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). Although we are dismissing the petitioner’s appeal on other grounds, the deficiency of the Form I-918 Supplement B submitted in support of her Form I-918 U petition is noted for the record and deemed an additional eligibility ground.

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 was the victim of a qualifying crime. 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.