



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF F-M-R-

DATE: NOV. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. See Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. 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)[.]

.....

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 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[.]

.....

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.”

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have entered the United States on April 1, 2001, without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on September 17, 2013. The Director issued a request for evidence (RFE) that the Petitioner suffered substantial physical or mental abuse as the result of a qualifying criminal activity. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility for U nonimmigrant status. The Director denied the Form I-918 U petition and the accompanying Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner claims that he is a victim of felonious assault, a qualifying crime under the Act.

## III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner’s brief on appeal, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

(b)(6)

*Matter of F-M-R-*

A. Assault in the Fifth Degree under Minnesota Law is not Substantially Similar to a Qualifying Crime or Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED] Chief of Police, [REDACTED] Police Department, on August 26, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as related crime(s) and added “Assault – 5th Degree” in the space indicating “other.” In Part 3.3, the certifying official referred to Minnesota Statutes section 609.224 “Assault in the 5th degree.” 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 “jumped by suspect and repeatedly struck in the face.” 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 had a cut on the left side of his face and general swelling and was transported to the hospital. The certifying official further stated in Part 4 that the Petitioner extended cooperation to the officers involved in the investigation and promised to continue to cooperate.

Under Minnesota law at the time of the commission of the criminal activity, a person was guilty of assault in the fifth degree, a misdemeanor, if he or she “(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another.” *See* Minn. Stat. § 609.224 (West 2015). On appeal, the Petitioner asserts that due to the nature of the criminal activity and the harm he suffered, assault in the fifth degree is substantially similar to assault in the second and third degree, which constitute felonious assault.

The [REDACTED] Police Department Incident Report indicates the type of incident as “Assault – 5th Degree.” The crime of assault in the fifth degree 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.” *See* 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the Minnesota assault offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *See* 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.

The statutory elements of assault in the fifth degree are not substantially similar to those for felonious assault, as defined under Minn. Stat. §§ 609.222 and 609.223 (second and third degree assault, respectively). Minnesota law provides that “[w]hoever assaults another with a dangerous weapon” is guilty of assault in the second degree. Minn. Stat. § 609.222 (West 2015). It further states that whoever “assaults another with a dangerous weapon and inflicts substantial bodily harm” is also guilty of assault in the second degree. *Id.* Assault in the third degree is defined as an assault that results in substantial bodily harm. Minn. Stat. § 609.223 (West 2015). Assault in the fifth degree involves an act with intent to cause fear in another of immediate bodily harm or death; or intentional infliction or attempt to inflict bodily harm upon another. *Id.* Felonious assault under Minnesota law requires, as an element of the offense, the presence of an additional aggravating factor, such as the infliction of a greater level of harm (substantial bodily injury) to the victim or the

use of a deadly weapon. Accordingly, in comparing the statutory elements of simple and aggravated assault, we find that the offenses are not substantially similar. *See* 8 C.F.R. § 214.14(a)(9).

The Petitioner asserts that, because his assailant used his hands to repeatedly punch the Petitioner, this action is similar to assault in the second degree under Minnesota law and that several Minnesota courts have found that hands and feet may qualify as dangerous weapons under certain circumstances. *See State v. Davis*, 540 N.W.2d 88 (Minn. Ct. App. 1995); *but see State v. Basting*, 572 N.W.2d 281 (Minn. 1977) (holding that hands are not, in all instances, deadly weapons). In addition, the Petitioner contends that, as a result of the attack, he suffered from a temporary but substantial disfigurement in the form of a cut on and swelling of his face, similar to the substantial bodily harm requirement in Minn. Stat. §609.223. As stated above, however, 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 crime that was investigated and the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The record indicates that the offense investigated was assault in the fifth degree, a misdemeanor offense. The certifying official did not indicate, and the record does not otherwise demonstrate, that felonious assault was also investigated or prosecuted. As discussed, the statutory elements of assault in the fifth degree and felony assault under Minnesota law are not substantially similar, and the Petitioner does not provide the requisite statutory analysis to demonstrate the claimed similarities between the offenses. The Petitioner has not, therefore, established that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

#### B. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established 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.

#### C. Possession of Credible or Reliable Information Establishing Knowledge Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of qualifying criminal activity, he has also not established that he possesses credible or reliable information establishing knowledge concerning details of the qualifying criminal activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

#### D. 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 not established 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.

#### IV. CONCLUSION

The Petitioner has not demonstrated that the offense of assault in the fifth degree under Minn. Stat. § 609.224 is a qualifying crime or substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. As the Petitioner has not established that the offense of which he was the victim of is qualifying criminal activity, he is prevented from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. Consequently, he is statutorily ineligible for U nonimmigrant status.

In these visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-M-R-*, ID# 14851 (AAO Nov. 10, 2015)