



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

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

MATTER OF C-N-B-

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);

(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.

According to the regulation at 8 C.F.R. § 214.14(a)(9), “any similar activity” is used to “refer to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 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.”

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Brazil who last entered the United States on July 20, 2001, pursuant to a valid visitor visa. 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 April 16, 2013. On March 5, 2014, the Director issued a request for evidence (RFE) requesting evidence that the crime listed on the Form I-918 Supplement B was a qualifying criminal activity and that the Petitioner suffered substantial physical or mental abuse as a result of a qualifying criminal activity. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility. The Director denied the Form I-918 and the Petitioner timely appealed. On appeal, the Petitioner claims that he was the victim of a qualifying criminal activity under the regulation.

## III. 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.

(b)(6)

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The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] in the Investigations Bureau with the [REDACTED] California Police Department (certifying official), on March 11, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and “other: strong arm robbery.” In Part 3.3, the certifying official referred to California Penal Code (CPC) § 212.5(B) 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, the certifying official indicated that the Petitioner “was the victim of a strong arm robbery.”

The [REDACTED] California Police Department Felony Report indicates that the Police Department investigated second degree robbery under CPC § 212.5(B). 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.

Under the CPC, “[r]obbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” CPC § 211 (West 2013). CPC Section 212.5(B) states that “Every robbery of any person while using an automated teller machine or immediately after the person has used an automated teller machine and is in the vicinity of the automated teller machine is robbery of the first degree.” California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” CPC § 240 (West 2013).

Assault with a deadly weapon or force likely to produce great bodily injury, also referred to as felonious assault, is defined in pertinent part, as:

(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.

CPC § 245 (West 2013).

No elements of robbery under CPC § 212.5 are similar to felonious assault under CPC § 245. The statute investigated in this case involves taking personal property from an individual through the use of force or fear and does not specify the commission of a violent injury as a necessary component.<sup>1</sup>

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<sup>1</sup> The Petitioner notes on appeal that CPS § 212.5(B) does not appear to be the statute actually investigated as the robbery did not occur at or near an automated teller machine. Nonetheless, we have considered both CPC §§ 212.5(B)

Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon or by “any means of force likely to produce great bodily injury.” CPC § 245. We recognize that qualifying criminal activity may occur during the commission of a non-qualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. 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 and robbery, he presented no evidence that the certifying agency investigated or intended to investigate a felonious assault and only notes that the Petitioner was the victim of a robbery. The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the felony report noted that the crime was “robbery: second degree” with “simple, not aggravated assault.” 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 robbery was investigated or prosecuted by the certifying agency.

On appeal, the Petitioner states that robbery in violation of CPC § 212.5 is similar to felonious assault, because his assailant used a gun in the commission of the robbery and robbery is a violent crime against a person, which the Petitioner classifies as a combination of larceny and assault. However, as stated above, felonious assault involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon. The proper inquiry is a comparison of the nature and elements of the crimes that were investigated and the qualifying crimes, not an analysis of the factual aspects of this particular event. *See* 8 C.F.R. § 214.14(a)(9). The felony report indicates that the means of assault was: “simple, not aggravated assault,” and states that the Petitioner was “the victim of a strong arm robbery.” Our inquiry is limited to the crime investigated or prosecuted as represented by the certifying official, not a crime that may fit the particular facts of the situation experienced by the Petitioner.

Although the Form I-918 Supplement B indicated in Part 3.1 that the Petitioner was the victim of felonious assault, no other evidence in the record demonstrates that the certifying agency investigated or prosecuted a felonious assault. The Petitioner also included the jury instructions for CPS § 211 which state that one of the elements of proving robbery is “using force or fear to take the property,” however, those instructions do not include the element of felonious assault that a deadly weapon must be present or that force is used that is “likely to produce great bodily injury.” The Petitioner has not demonstrated that CPC § 212.5 includes the requirement that a deadly weapon be used in the commission of the crime or any other fact that would equate an investigation of robbery under CPC § 212.5 to a felonious assault or amount to a qualifying crime under section 101(a)(15)(U)(iii) of the Act.

Here, the evidence in the record does not establish that the criminal offense of which the Petitioner was a victim, robbery, is substantially similar to any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The Petitioner, therefore, is not the victim

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and 211 and, as both statutes have the same elements of robbery except for the location where the robbery occurred, we find no difference in analysis between the two statutes.

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of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

#### IV. 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 he was the victim of a qualifying crime. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-N-B-*, ID# 14787 (AAO Nov. 10, 2015)