



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

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

MATTER OF M-P-R-

DATE: NOV. 16, 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 last entered the United States in September 2001. 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 December 20, 2013. The Director issued a request for evidence (RFE) that the Petitioner suffered substantial physical or mental abuse as the result of the qualifying criminal activity. The Director also requested that the Petitioner provide a new or updated unexpired Form I-918 Supplement B with her correct name. 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 (Form I-192). The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner claims that she was a victim of a crime comparable to felonious assault, a qualifying crime.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the Petitioner’s brief on appeal, indicates that the Petitioner has not overcome the Director’s decision to deny the Petitioner’s Form I-918 petition.

(b)(6)

Matter of M-P-R-

A. Robbery under Illinois Law is not Substantially Similar to a Qualifying Crime or Criminal Activity

The Form I-918, Supplement B initially submitted with the Petitioner's Form I-918 was signed by [REDACTED], Sergeant-Field Services, [REDACTED] Police Department and dated more than six months prior to the Form I-918 filing date. In addition, the original Form I-918, Supplement B was issued to [REDACTED] which is not the Petitioner's name, and no evidence was provided to establish that the form was issued to the Petitioner. In response to the RFE, the Petitioner submitted a second Form I-918, Supplement B that was signed by Sergeant [REDACTED] on March 1, 2015, but was still issued to [REDACTED]. On appeal, the Petitioner submits a third Form I-918, Supplement B, also signed by Sergeant [REDACTED] listing the Petitioner as the victim.

On each Form I-918, Supplement B, the certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and added "attempt robbery" in the space indicating "other." In Part 3.3, which directs the certifying official to list the statutory citation for the criminal activity investigated or prosecuted, he referred to Illinois Compiled Statutes (ILCS) § 720 ILCS 5/8-4 (attempt robbery). 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 the victim of Attempt Robbery in that she was punched by the offender who then attempted to take her purse." 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 "sustained a laceration to her inner mouth and swelling to her face." 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.

The [REDACTED] Police Department Original Case Report indicates the type of incident as "Robbery-Attempt: Strongarm-No Weapon." 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 ILCS a "person commits robbery when he or she knowingly takes property, except a motor vehicle covered by section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force." See § 720 ILCS 5/8-4 (West 2012). The elements of robbery under 720 ILCS 5/8-4 are not similar to aggravated assault as defined under ILCS § 720 5/12-2. 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. The pertinent section of the aggravated assault statute, however, involves assault with a deadly weapon. On appeal the Petitioner asserts that, because she was attacked, the statutes that must be compared are battery and aggravated assault rather than robbery and aggravated

assault. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying 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 he or any other law enforcement entity investigated, or that there was any intent to investigate battery and felonious assault, and only describes the robbery experienced by the Petitioner.

On appeal, the Petitioner claims that, although robbery was investigated, the police report shows that she was assaulted when she was punched in the face. 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 qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The Petitioner has not demonstrated that the nature and elements of the criminal offense of which she was a victim, attempted robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault. The Petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. A Properly Executed Form I-918, Supplement B was not Timely Submitted

The submission of a properly executed Form I-918 Supplement B is required by statute at section 214(p)(1) of the Act (“The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification . . .”). As provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 U petition “must include” as initial evidence a Form I-918 Supplement B. The Petitioner initially submitted two Supplement B forms issued to a name not belonging to the Petitioner. In addition, the first Form I-918 Supplement B was not issued within six months of filing her Form I-918. On appeal, the Petitioner submits a properly executed Form I-918 Supplement B dated April 20, 2015. Although the newly submitted Form I-918 Supplement B contains the Petitioner’s name, it was not signed within the six-month period preceding the filing of her nonimmigrant U petition and 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) (as long as regulations remain in force, they are binding on government officials). Accordingly, only the original, incorrect Form I-918 Supplement B will be considered, and it does not meet the statutory requirements as described at section 214(p)(1) of the Act. As the Petitioner did not submit the required initial evidence with her Form I-918 U petition, she is ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

IV. THE REMAINING STATUTORY REQUIREMENTS

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she also cannot establish that she meets the remaining statutory requirements at section 101(a)(15)(U)(i)(II)–(IV) of the Act.

IV. CONCLUSION

In 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 M-P-R-*, ID# 15131 (AAO Nov. 16, 2015)