



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

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

MATTER OF E-D-J-P-M-

DATE: NOV. 17, 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 matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

The Director denied the petition because the Petitioner did not establish that he was the victim of qualifying criminal activity, suffered resultant substantial physical or mental abuse, possesses information concerning the qualifying criminal activity, has been helpful to authorities investigating or prosecuting qualifying criminal activity, and that qualifying criminal activity occurred within the jurisdiction of the United States. On appeal, the Petitioner submits a brief and additional evidence.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides 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 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. . . .
- (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. . . .
- (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
- (4) The qualifying criminal activity occurred in the United States

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

(b)(6)

Matter of E-D-J-P-M-

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 on January 1, 1998, without inspection, admission or parole. On September 12, 2013, the Petitioner filed a Form I-918, Petition for U Nonimmigrant Status, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. On the same day, the Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. On June 2, 2014, the Director issued a Request for Evidence (RFE) establishing, among other things, that the Petitioner was the victim of qualifying criminal activity. 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 and Form I-192. The Petitioner timely appealed the denial of the Form I-918.

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the Director’s decision to deny the Form I-918 for the following reasons.

III. ANALYSIS

A. Claimed Criminal Activity

The Form I-918 Supplement B submitted into the record was signed by Lieutenant (Lt.) [REDACTED] Criminal Investigation Division, [REDACTED] Sheriff Department, [REDACTED] Texas (certifying official), on March 15, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as aggravated robbery. In Part 3.3, the certifying official referred to Texas Penal Code § 29.03, aggravated robbery, 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, he referred to the attached Offense Report (107022.1) (offense report) filed by Officer [REDACTED]. Officer [REDACTED] stated that the Petitioner told him that he followed a car, one of whose occupants threw a beer bottle at his truck, to get the license plate number, until the vehicle stopped and “several guys got out and came at him pulling him out of the vehicle. [The Petitioner] said they began hitting him and kicking him while he was down on the ground.” The offense report stated that the Petitioner said he could not find his wallet, and that Officer [REDACTED] returned to the crime scene, and did not find the wallet. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official again referred to the offense report, where Officer [REDACTED] observed the Petitioner “bleeding from his mouth and eye area. I observed both eyes to be swollen shut puffy and already turning black and blue . . . a large cut just above his eye . . . lips to be swollen and a small cut on his bottom lip.” In Part 4, the certifying official indicated that the Petitioner cooperated and assisted law enforcement in the investigation.

(b)(6)

Matter of E-D-J-P-M-

B. Aggravated Robbery under Texas Law is a Qualifying Crime

The Form I-918 Supplement B indicates that the crime of aggravated robbery was investigated. The Incident/Offense Report of the [REDACTED] Sheriff's Office indicates that both robbery and robbery-strong arm were investigated and that the crime occurred on [REDACTED] 2001. The weight of the evidence establishes that the crime of aggravated robbery was investigated. The crime of aggravated 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 aggravated robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *See id.* The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

On appeal, the Petitioner claims that aggravated robbery is substantially similar to the qualifying crime of felonious assault. At the time of the criminal activity, the Texas Penal Code provided that a person commits aggravated robbery when in the course of committing theft, the person commits robbery as defined in § 29.02¹ and the person: (1) causes serious bodily injury to another, or (2) uses or exhibits a deadly weapon. Tex. Penal Code Ann. § 29.03 (West 2001). Under the 2001 Texas Penal Code, a person commits aggravated assault who commits the offense of assault as defined in § 22.01² and the person: (1) causes serious bodily injury to another, including the person's spouse; or (2) uses or exhibits a deadly weapon during the commission of the assault. Tex. Penal Code Ann. § 22.01 (West 2001).

The aggravated robbery statute investigated in this case involves causing serious bodily injury or using or exhibiting a deadly weapon while committing theft. Aggravated assault under the Texas Penal Code also involves causing serious bodily injury or using or exhibiting a deadly weapon upon another person. On the Form I-918 Supplement B, the certifying official referred to the offense report, which described the assault on the Petitioner and the resulting injury. Evidence in the record establishes that the nature and elements of the criminal offense of which the Petitioner was a victim, aggravated robbery, are substantially similar to felonious assault under section 101(a)(15)(U)(iii) of

¹ Under Tex. Penal Code Ann. § 29.02 (West 2001), a person commits robbery who in the course of committing theft, in part: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

² The offense of assault at Tex. Penal Code Ann. § 22.01 (West 2001) provides that a person commits assault who: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b)(6)

Matter of E-D-J-P-M-

the Act. Accordingly, the Petitioner has established the requisite victimization under section 101(a)(15)(U)(i) of Act and we withdraw the Director's contrary determination.

C. The Remaining Statutory Criteria

The evidence in the record also establishes the other statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act. The record contains two personal statements from the Petitioner, who indicated that he was out of work for three months following the assault on him. He submitted his medical bills and recounted that he incurred over \$33,000 in hospital and medical bills, which he has not paid off. He explained that he is as a result in financial distress. The record contains medical evidence indicating that the Petitioner suffered multiple contusions, a broken nose, an orbital fracture, and broken ribs from the assault. The Petitioner stated that he continues to live in fear for his life, and has pain which interferes with his ability to work long hours. The Petitioner's medical records are consistent with his claims of acute injury from the 2001 assault. The record also contains a Biopsychosocial Assessment from [REDACTED] a licensed clinical social worker, who diagnosed the Petitioner with clinically significant and chronic post-traumatic stress disorder resulting from the assault, with continuing symptoms of hypervigilance, an exaggerated startle response, muscle aches, lower back pain and headaches. The totality of the evidence demonstrates that the Petitioner suffered substantial physical and mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act.

Furthermore, the certifying official provided on the Form I-918 Supplement B that the Petitioner possessed information about the qualifying crime, was helpful in the investigation and prosecution of the qualifying criminal activity, and that the qualifying criminal activity took place in the United States, as required under subsections 101(a)(15)(U)(i)(II)–(IV) of the Act. Accordingly, the evidence in the record establishes the statutory elements required for U classification at section 101(a)(15)(U)(i) of the Act, and we withdraw the Director's decision to the contrary.

D. Admissibility

Notwithstanding our withdrawal of the Director's determination, the instant petition may not be approved because the Petitioner remains inadmissible to the United States. Section 212(d)(14) of the Act requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192, in order to waive a ground of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. *See* 8 C.F.R. § 212.17(b)(3).

In this case, the Director denied the Petitioner's Form I-192 solely on the basis of the denial of the Form I-918. The Director indicated that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (alien present in the United States without admission or parole) and 212(a)(9)(A)(ii)

(alien who departed the United States while an order of removal was outstanding) of the Act. The record does not support a finding of the Petitioner's inadmissibility under section 212(a)(9)(A)(ii) of the Act as the record reflects that the Petitioner was not previously ordered removed. The record reflects that the Petitioner was ordered by an immigration judge to depart the United States voluntarily on or before December 4, 1997, and he departed the United States on December 3, 1997. The Petitioner therefore timely departed the United States under a grant of voluntary departure. The record, however, shows that the Petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act as an alien present in the United States without being admitted or paroled. The Director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver, but denied the Petitioner's waiver request based solely on the denial of the Form I-918. Because the Petitioner has overcome this basis for denial on appeal, we will remand the matter to the Director for reconsideration of the Petitioner's Form I-192.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has been met as to the Petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because it appears that the Petitioner is inadmissible to the United States and his Form I-192 has been denied. Because the basis for denial of the Petitioner's Form I-918 has been overcome on appeal, the matter will be remanded to the Director for further action and issuance of a new decision.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of E-D-J-P-M-*, ID# 14355 (AAO Nov. 17, 2015)