



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

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

MATTER OF N-Y-A-F-

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 appeal will be dismissed.

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. 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 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

(b)(6)

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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 Honduras who claims to have last entered the United States in May 2001, without admission, inspection or parole. The Petitioner filed the instant Form I-918 on November 13, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director issued a request for evidence (RFE) establishing, among other things, that the criminal offense of which the Petitioner was a victim constituted a qualifying criminal activity or was substantially similar to a qualifying crime. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner’s eligibility.

The Director denied the petition, concluding that the Petitioner had not established that she was a victim of qualifying criminal activity or criminal activity that was substantially similar to one of the qualifying crimes, and consequently, she also had not demonstrated that she had suffered resultant substantial physical or mental abuse, possessed information concerning the qualifying criminal activity, had been helpful to authorities investigating or prosecuting qualifying criminal activity, and that such qualifying activity occurred within the jurisdiction of the United States. The Petitioner timely appealed. On appeal, the Petitioner submits a brief.

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director’s grounds for denial. The appeal will be dismissed for the following reasons.

III. ANALYSIS

A. Claimed Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed on May 14, 2013 by [REDACTED] Assistant Prosecutor, [REDACTED] Prosecutor’s Office, [REDACTED] New Jersey (certifying official). The certifying official marked the box for “Other” and indicated “Robbery” in Part 3.1 of the certification, which inquires about the type of criminal activity of which the Petitioner was a victim. In Part 3.3, the certifying official listed section 2C:15-1 of the New Jersey Statutes, relating to the offense of Robbery, as the corresponding statutory citation for the criminal activity investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, [REDACTED] stated that the perpetrator grabbed the Petitioner by the neck from behind, pulled off and stole a chain from her, and pushed her to the ground, causing her to land in the street. He indicated that the perpetrator had been charged with four counts of robbery.

B. Qualifying Criminal Activity

The record demonstrates that the Petitioner was a victim of robbery on March 14, 2012. When determining what criminal activity a certifying agency detected, investigated or prosecuted, we look to the relevant criminal statute as provided on the Form I-918 Supplement B and on any accompanying reports. The certifying official specifically stated in the Form I-918 Supplement B that the Petitioner was a victim of robbery and provided the corresponding New Jersey criminal statute for that offense as the criminal activity that was investigated or prosecuted by the certifying agency.

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 crime investigated here, robbery, 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.

At the time of the offense in 2012, robbery under N.J. Stat. Ann. § 2C:15-1 provided, in pertinent part, as follows:

- a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
 - (1) Inflicts bodily injury or uses force upon another; or
 - (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
 - (3) Commits or threatens immediately to commit any crime of the first or second degree.

The Petitioner contends that robbery under N.J. Stat. Ann. § 2C:15-1 is substantially similar to the qualifying criminal offense of felonious assault. Simple and felony assault under New Jersey law is found at section 2C:12-1 of the N.J. Stat. Ann., which provides, in pertinent part:

- a. Simple assault. A person is guilty of assault if he:
 - (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
 - (2) Negligently causes bodily injury to another with a deadly weapon; or
 - (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon[.]¹

The statutory elements of robbery under N.J. Stat. Ann. § 2C:15-1 are not substantially similar to the elements of aggravated assault under N.J. Stat. Ann. § 2C:12-1. New Jersey's aggravated assault statute involves the commission of a simple assault with an added aggravating factor, such as the attempt to cause or the infliction of "serious bodily injury" or the use of a deadly weapon during the assault. *See* N.J. Stat. Ann. § 2C:12-1(b)(1)-(2). The robbery offense that was investigated here involves the commission of a theft offense during which a simple assault is committed, without the presence of any such aggravating factors. Accordingly, the offense of robbery that was investigated here is not substantially similar to felonious assault. *See* 8 C.F.R. § 214.14(a)(9).

On appeal, the Petitioner contends that the Director erred in comparing the statutory elements of robbery and aggravated assault under New Jersey law, instead of determining whether the elements of the New Jersey robbery offense constitute a felonious assault for U nonimmigrant visa purposes. The Petitioner provides no binding legal authority for this assertion that USCIS may not look to the relevant state statute in identifying the elements of a specific qualifying criminal activity to determine whether they are substantially similar to the elements of the criminal activity that was investigated or prosecuted. The Petitioner also does not indicate which definition of felonious assault we should consider in identifying the statutory elements of that offense. However, insofar as she relies on one of our prior non-precedent decisions, in which we compared the statutory elements of robbery under the Texas Penal Code with those of felonious or aggravated assault, as defined under the Model Penal Code, we will also consider whether robbery offense here is substantially similar to felonious assault under the Model Penal Code definition of the term.

Aggravated assault under Model Penal Code § 211.1(2) provides, in pertinent part, as follows:

- (2) Aggravated Assault. A person is guilty of aggravated assault if he:
 - (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the

¹ Aggravated assault also includes pointing a firearm at another person, as well as the commission of a simple assault upon public officials and certain individuals as defined by statute and under specific circumstances not relevant here. *See* N.J. Stat. Ann. §§ 2C:12-1(b)(4),(5).

value of human life; or

(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

As is the case with New Jersey's aggravated assault statute, the Model Penal Code definition also requires the presence of an additional aggravating factor such as "serious bodily injury" or the use of a deadly weapon as a statutory element to elevate the severity of the offense from a simple to an aggravated assault. New Jersey's robbery statute at issue here requires no such aggravating factors to obtain a conviction.

The Petitioner refers to two of our prior non-precedent decisions, asserting that we found the robbery offenses in those cases to constitute a qualifying crime under facts indistinguishable from the Petitioner's here. However, as non-precedent decisions, they are not binding in these proceedings. Additionally, the March 19, 2015, non-precedent decision the Petitioner proffered can be distinguished from the instant case. In that decision, we found that the certifying official had specified on the Form I-918 Supplement B that felonious assault had been investigated or prosecuted, in addition to robbery, and the underlying record supported the certification. As such, we found that the petitioner there had established that he was the victim of the qualifying criminal activity of felonious assault.

The Petitioner further contends that she was a victim of the qualifying crime of felonious assault, because the underlying circumstances of the criminal offense, including the bodily injuries inflicted on her, demonstrate that she was assaulted during a felony crime. As discussed, the proper inquiry is not an analysis of the factual details underlying the criminal activity as asserted by the Petitioner, but rather a comparison of the nature and elements of the criminal activity that was actually detected, investigated or prosecuted. *See* 8 C.F.R. § 214.14(a)(9). As discussed, the Form I-918 Supplement B and the record as a whole demonstrates that the only offense detected, investigated or prosecuted was robbery under N.J. Stat. Ann. § 2C:15-1, and the Petitioner has not established that the New Jersey robbery offense is a qualifying crime or that it is substantially similar to felonious assault or any other qualifying criminal activity. The Petitioner, therefore, has not established that she was the victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i),(iii) of the Act.

C. Substantial Physical or Mental Abuse

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

D. 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 not established that she 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.

E. Helpfulness to Authorities Investigating or Prosecuting the Qualifying Criminal Activity

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she has also not established that she 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 section 101(a)(15)(U)(i)(III) of the Act.

F. Jurisdiction of Qualifying Criminal Activity

As the Petitioner has not established that she was the victim of a qualifying crime or criminal activity, she has also not established that qualifying criminal activity occurred within the jurisdiction of the United States, as required by section 101(a)(15)(U)(i)(IV) of the Act.

IV. CONCLUSION

The Petitioner has not demonstrated that the criminal activity of which she was a victim, robbery under N.J. Stat. Ann. § 2C:15-1, is a qualifying crime or substantially similar to one of the qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Consequently, the Petitioner has not established that she was a victim of qualifying criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act. She, therefore, also does not meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-Y-A-F-*, ID# 14441 (AAO Nov. 17, 2015)