



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

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

MATTER OF M-J-C-

DATE: NOV. 18, 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 May 20, 1997, 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 August 8, 2014. The Director issued a request for evidence (RFE) that the Petitioner was the victim of and suffered substantial physical or mental abuse as the result of the 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 (Form I-192). The Petitioner timely appealed the denial of the Form I-918. On appeal, the Petitioner claims that she suffered substantial physical or mental abuse as a result of being a victim of 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, does not establish that the Petitioner meets the definition of a victim of qualifying criminal activity.

(b)(6)

Matter of M-J-C-

A. Assault in the Fourth Degree under Washington State 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] Sheriff, [REDACTED] on June 3, 2014. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault, conspiracy to commit any of the named crimes, and added “Assault, Fourth Degree” 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, the certifying official cited Revised Code of Washington (RCW) section 9A.36.041, Assault Fourth 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 assaulted. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that the “report indicates that red marks were noticed on the victim.” 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 crime of assault in the fourth degree is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the Act 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 Washington 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.

Under the RCW, “A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another... Assault in the fourth degree is a gross misdemeanor.” *See* Wash. Rev. Stat. § 9A.36.041 (West 2012). On appeal, the Petitioner asserts that due to the nature of the criminal activity and the harm she suffered, assault in the fourth degree is “akin” to felonious assault as defined in RCW section §9A.36.021 and therefore constitutes a qualifying crime. The Petitioner further asserts that this is supported by the fact that the certifying official listed felonious assault as the criminal activity on the Form I-918 Supplement B. Section 9A.36.021 states that:

- (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:
 - (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or
 - (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or
 - (c) Assaults another with a deadly weapon; or

(b)(6)

Matter of M-J-C-

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

See Wash. Rev. Stat. § 9A.36.021 (West 2012).

Felonious assault under Washington 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 fourth degree and felonious assault, we find that the offenses are not substantially similar. *See* 8 C.F.R. § 214.14(a)(9).

Further, although felonious assault and conspiracy were indicated on the Form I-918 Supplement B, the record does not establish that these crimes were investigated. The Incident/Follow-up Report states that the crime investigated was assault in the fourth degree. The letter to the Petitioner from the [REDACTED] Prosecutor advising the Petitioner that she may be called to testify as a witness in the case also cites the investigated crime as assault in the fourth degree. As stated above, the statutory elements of assault in the fourth degree and felony assault under Washington 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, therefore, failed to establish that she was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

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.

V. CONCLUSION

The Petitioner has not demonstrated that the offense of assault in the fourth degree under RCW section 9A.36.041 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 she was the victim of is qualifying criminal activity, she is prevented from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. Consequently, she is statutorily ineligible for U nonimmigrant status.

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-J-C-*, ID# 14926 (AAO Nov. 18, 2015)