



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

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

MATTER OF M-C-O-T-

DATE: NOV. 23, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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 Petitioner filed an appeal of the Director's adverse finding, and we dismissed the appeal. The matter is now before us on a motion to reopen. The motion to reopen will be denied.

**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;

Robbery is not listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act. Felonious assault and false imprisonment are listed as qualifying criminal activities in clause (iii) of section 101(a)(15)(U) of the Act.

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. 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 March 2000 without inspection, admission or parole. The Petitioner filed the Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on January 22, 2013. On July 29, 2014, the Director denied the petition, finding that the Petitioner did not establish that she had suffered substantial physical or mental abuse as a victim of qualifying criminal activity. We dismissed the Petitioner’s subsequent appeal in a decision

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dated April 13, 2015. We discussed the relevant evidence in detail in our prior decision, which is incorporated here by reference, and determined that the Petitioner did not suffer substantial physical or mental abuse as a victim of qualifying criminal activity. Beyond the decision of the Director, we determined that the crime at issue was not qualifying criminal activity. The Petitioner timely filed the instant motion to reopen.

We review these proceedings *de novo*. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner submits a new Form I-918 Supplement B and additional evidence to establish that she suffered substantial physical and mental abuse as a result of her victimization.

### III. ANALYSIS

#### A. Qualifying Criminal Activity

The record before the Director contained a Form I-918 Supplement B signed by [REDACTED] Special Victim Crime Unit, [REDACTED] California, Police Department (certifying official), on September 12, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as felonious assault and related crime(s). In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211, 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 stated that the petitioner “was a victim of felonious assault at the hands of an unknown individual who robbed her using physical force in a public place.” 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 “suffered physical injury to her hand.”

On motion, the Petitioner asserts for the first time that she was a victim of false imprisonment, which is a qualifying crime under section 101(a)(15)(U)(iii) of the Act. The Petitioner submits a new Form I-918 Supplement B signed by the same certifying official on May 3, 2015. At Part 3.1, the certifying official lists the crimes of false imprisonment, felonious assault and robbery as the criminal activity that the Petitioner was a victim of. At Part 3.3, the certifying official lists California Penal Code §§ 211 (robbery) and 236 (false imprisonment) as the criminal activities investigated or prosecuted. At Part 3.5 of the new Form I-918 Supplement B the certifying official indicates that the Petitioner “was grabbed by the hand and had her arm twisted behind her back by Unknown Suspect, who then robbed her of her cell phone.” At Part 3.6, the certifying official describes the Petitioner’s injury, stating that she was “crying, favoring her left hand, and reported pain to her left finger.” The Petitioner also submits a letter from [REDACTED] District Attorney, City and County of [REDACTED] stating that robbery is classified as a felony when the police determine that the offense involved the immediate threat of injury.

The submission of a 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 “must include” as initial evidence a Form I-918 Supplement B “signed by a certifying official within the six months

immediately preceding the filing of Form I-918.” 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) (stating that as long as regulations remain in force, they are binding on government officials). As the petitioner did not submit the May 3, 2015, Form I-918 Supplement B within six months preceding the filing of the instant Form I-918, it does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and therefore will not be considered in these proceedings.<sup>1</sup>

#### B. Robbery is Not Substantially Similar to Felonious Assault in California

On appeal, the Petitioner asserted that she was the victim of felonious assault and robbery, and that robbery under California law was substantially similar to felonious assault, a qualifying crime under § 101(a)(15)(U)(iii) of the Act. We determined that, although both the police incident report and the Form I-918 Supplement B at Part 3.3 stated that robbery under Ca. Penal Code § 211 was investigated or prosecuted, the Petitioner had not demonstrated that robbery is substantially similar to felonious assault under California law.<sup>2</sup>

On motion, the Petitioner asserts that robbery is a compound felony involving elements of both theft and assault. Cal. Penal Code § 211 (West 2012) defines robbery as “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.” 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. The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Cal. Penal Code § 240 (West 2012) defines assault as “an unlawful attempt, coupled with a present ability, to commit a violent injury upon the person of another.” While there are similarities between assault and robbery under the California Penal Code, simple assault is not a qualifying crime under §101(a)(15)(U)(iii) of the Act. As we noted in our previous decision, felonious assault in California involves an aggravating factor which was not present in this case, such as assault with a deadly weapon or force likely to produce great bodily injury, assault with caustic chemicals or flammable substances, or assault against a specific class of persons (such as peace officers, fire fighters, custodial officers or school employees). *See* Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2012).

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<sup>1</sup> Although false imprisonment is one of the specified qualifying crimes, there is no evidence that the certifying agency investigated an attempted or actual false imprisonment against the Petitioner. As noted above, the police incident report indicated the type of incident as robbery. The certifying official does not submit additional records or reports indicating why he added false imprisonment as a crime that was either investigated or prosecuted.

<sup>2</sup> We determine, in our sole discretion, the evidentiary value of a Form I-918 Supplement B. *See* 8 C.F.R. § 214.14(c)(4).

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In her brief on motion, the Petitioner discusses assault, but not felonious assault, under California law. The Petitioner also discusses a non-precedent decision that we issued on March 19, 2015, finding that the petitioner in that case was a victim of felonious assault under California law. However, as a non-precedent decision, it is not binding in these proceedings. The Petitioner has not shown that the nature and elements of the crimes of felonious assault and robbery are substantially similar under California law, as no elements of robbery under Cal. Penal Code § 211 are similar to felonious assault under the California Penal Code. The robbery statute investigated in this case involves taking personal property from an individual through the use of force or fear, and does not require force likely to produce great bodily injury, the use of a weapon or caustic/flammable substances, or assault against a protected class, as a necessary component.

As discussed in our previous decision, the certifying official's indication at Part 3.1 that the petitioner was the victim of a felonious assault is not supported in the record. The incident report noted that the crime was robbery with force. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the petitioner, involving any of the aggravating factors described above. 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. Here, the evidence of record does not demonstrate that the crime of felony assault was investigated or prosecuted. The petitioner is, therefore, not the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

### C. Substantial Physical or Mental Abuse

On appeal, we reviewed the Petitioner's statement, the statement from [REDACTED], the Form I-918 Supplement B, and the police incident report, and determined that the Director correctly found that the Petitioner had not suffered substantial physical or mental abuse from the criminal activity. On motion, the Petitioner submits an additional personal statement and a supplemental statement from [REDACTED]. The Petitioner's motion to reopen our decision does not overcome our previous determination that she did not suffer substantial abuse as a result of the criminal activity.

When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

In her statement, the Petitioner indicates that when it is cold outside, she experiences intermittent pain on her left ring finger. She indicates that she attended a therapy session in December 2012, and was prescribed medication for anxiety and to help her sleep, but she could not afford to continue the medication or the therapy. She recounts that the incident brought up the memory of her father getting killed in Mexico. The Petitioner states that she still has trouble sleeping, has nightmares, and

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is afraid to walk where the incident occurred. In their evaluation, [REDACTED], an associate clinical social worker, and [REDACTED], a licensed clinical social worker, with [REDACTED] state that the Petitioner clinically presented with anxiety and depression. [REDACTED] state that the Petitioner reported that she is afraid of being around individuals who are African-American, she is afraid when she has to pick up her son at school, she has withdrawn and stopped socializing, and her anxiety has caused her to gain a lot of weight. [REDACTED] and [REDACTED] report that based on clinical observations and testing, the Petitioner suffers from PTSD and depression.

We acknowledge the Petitioner's claim that she suffered an injury to her left ring finger from the incident. The findings of [REDACTED] and [REDACTED] however, are only partially supported by the Petitioner's statement on motion, in which she recounts that she continues to work as an assistant manager at a restaurant and cares for her son. She did not include a probative, detailed description of how the criminal activity has impacted her daily life, her interactions with others, and her overall well-being. Based on the totality of factors described at 8 C.F.R. § 214.14(b)(1), including 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 health, or physical or mental soundness of the Petitioner, the evidence in the record does not demonstrate that the petitioner suffered substantial physical or mental abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.<sup>3</sup>

#### IV. CONCLUSION

On motion, the Petitioner has not overcome our previous determinations. She did not establish that she is a victim of qualifying criminal activity and that she suffered substantial abuse resulting from qualifying criminal activity. The Petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U) of the Act.

The Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 motion to reopen is denied.

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<sup>3</sup> Moreover, as the Petitioner was not the victim of qualifying criminal activity, she cannot be found to have suffered from substantial physical or mental abuse resulting from qualifying criminal activity. See subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).