



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

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

MATTER OF A-G-S-

DATE: OCT. 6, 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.

The Director denied the petition because the Petitioner did not establish that he has been the victim of qualifying criminal activity, that he has suffered substantial physical and mental abuse as the result of having been a victim of qualifying criminal activity, that he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity, and that he has been, is being, or is likely to be helpful to United States law enforcement authorities investigating or prosecuting the qualifying criminal activity. On appeal, the Petitioner submits a brief and additional evidence.

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 Ireland who claims to have last entered the United States in August or September 2007. 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 September 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 personal statement addressing the 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

(b)(6)

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the Form I-918. On appeal, the Petitioner claims that he suffered substantial physical or mental abuse as a result of being a victim of felonious assault, a qualifying crime.

A. Claimed Criminal Activity

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED], STG/Special Victim Unit, [REDACTED] Police Department, on August 22, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and added “armed robbery” in the space indicating “other.” In Part 3.3, the certifying official referred to California Penal Code (CPC) § 211 (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 robbed of his valuables, including, his wallet, iPod, credit cards, and his California Driver’s License. The crime is being investigated for armed robbery with suspected use of stun gun.” 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 was complaining of “chest pain, rib cage pain, and difficulty in breathing.” 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.

III. ANALYSIS

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

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

The [REDACTED] Police Department Incident Report indicates the type of incident as robbery with “other 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 CPC, “[r]obbery is 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.” Cal. Penal Code § 211 (West 2013). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2013). Assault with a deadly weapon or force likely to produce great bodily injury is defined as, in pertinent part:

(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245 (West 2013).

The elements of robbery under CPC § 211 are not similar to assault under CPC §§ 240 or 245. 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. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon. 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 armed robbery, he presented no evidence that he or any other law enforcement entity investigated, or that there is any intent to investigate felonious assault, and only describes the robbery experienced by the Petitioner.

The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the Incident Report noted that the crime was “robbery” with “other weapon” but did not further identify the weapon as a deadly weapon. The Incident Report indicated that the certifying agency located a stun gun on the ground approximately 12 inches from the Petitioner and that the Petitioner denied owning a stun gun but was unsure if he had been stunned or not. According to CPC § 245.5(a), a “stun gun” is a “weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge.” A stun gun is not, therefore, a deadly weapon. *See People v. Jefferson*, Cal. App. 2d, WL 575772 (2004). There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. The Petitioner has not shown that any crime other than robbery was investigated or prosecuted by the law enforcement agency.

On appeal, the Petitioner states that robbery in violation of CPC § 211 is similar to felonious assault, because robbery includes “all the elements of both theft and assault.” *Citing People v. Sutton*, 35 Cal. App. 3d 264, 270-271 (1973). 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 he was a victim, 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.

Here, the evidence in the record and the Petitioner’s contentions fail to establish that the criminal offense of which the Petitioner was a victim, robbery, is substantially similar to 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. Substantial Physical or Mental Abuse

As the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act.

C. Possession of Information Concerning Qualifying Criminal Activity

As the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

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

As the Petitioner did not establish that he was the victim of a qualifying crime or criminal activity, he has also failed to establish that he 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 subsection 101(a)(15)(U)(i)(III) 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 A-G-S-*, ID# 14188 (AAO Oct. 6, 2015)