



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

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

MATTER OF K-E-S-F-

DATE: OCT. 14, 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 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 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);
- (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: rape; torture;

trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

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.”

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;

(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. . . .

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<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the Petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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(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 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 in April 2004 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 October 22, 2013. On September 9, 2014, the Director issued a Request for Evidence (RFE), that the crime listed on the law enforcement certification was a qualifying crime. 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 the Petitioner timely appealed this decision. On appeal, the Petitioner claims that she suffered substantial injury as a result of an assault and thus established her eligibility for U nonimmigrant status.

The Petitioner submitted a Form I-918 Supplement B with her initial petition signed by [REDACTED] Chief of Police of the [REDACTED] Minnesota Police Department (certifying official) on May 28, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as felonious assault and “other: bullying.” In Part 3.3, the certifying official referred to Minn. Stat. Ann. § 609.224.1 as the criminal activity investigated or prosecuted. In Part

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3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the Petitioner was attacked by a “fellow female schoolmate riding on the school bus.” The certifying official further noted that the attack was retaliatory due to the Petitioner defending her younger sister earlier. The certifying official stated in Part 3.6 that the Petitioner “suffered multiple injuries to her face, head, and eyes” and suffered emotional and psychological stress in addition to her physical injuries.

In response to the Director’s RFE, the Petitioner submitted a second Form I-918 Supplement B signed by the same certifying official on November 14, 2014. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as “felonious assault”, “attempt to commit a named crime”, “related crime”, and “other: bullying/assault.” In Part 3.3, the certifying official referred to Minn. Stat. Ann. §§ 121A.031, 609.224, 609.02.1, 609.02.10 as the criminal activity investigated or prosecuted. The certifying official’s comments in Part 3.5 and 3.6 are the same as on the originally submitted Form I-918 Supplement B.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the Director’s decision to deny the Petitioner’s Form I-918.

#### A. Misdemeanor Assault under Minnesota Law is not Qualifying Criminal Activity

The crime of felonious assault is 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, misdemeanor assault, 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.

The [REDACTED] Minnesota Police Department incident report indicates that the only offense investigated and charged was assault in the fifth degree, which is a misdemeanor offense. Minn. Stat. Ann. § 609.224.1. Under Minnesota law, “assault” is defined as “an act done with intent to cause fear in another of immediate bodily harm or death; or the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. Ann. § 609.02(10). Misdemeanor assault is defined as committing “an act with intent to cause fear in another of immediate bodily harm or death or intentionally inflict[ing] or attempt[ing] to inflict bodily harm upon another.” Minn. Stat. Ann. § 609.224(1) (West 2014). An aggravated or felonious assault is defined as an assault involving great bodily harm, an assault against protected classes, using a dangerous weapon, or an assault with the imposition of substantial bodily harm. Minn. Stat. Ann. §§ 609.221-223. Minn. Stat. Ann. § 121A.031(1) sets forth the definitions, scope, and application of the anti-bullying program for schools; subdivision 7 specifically states that the section does not “establish any private right of action [or] limit rights currently available . . . under other civil or criminal law . . . .”

Felonious assault in Minnesota involves an assault with one of the aggravating factors named above. Although the certifying official indicated in Part 3.1 on the second Form I-918 Supplement B that an attempted and actual felonious assault was investigated or prosecuted, in Part 3.3 of both the original and second Form I-918 Supplement B, the certifying official did not indicate that felonious assault was detected or investigated and, as noted above, the incident report indicates that the only offense investigated and charged was assault in the fifth degree, which is a misdemeanor offense. Instead, the certifying official indicated that misdemeanor assault was investigated and prosecuted, specifying Minn. Stat. Ann. § 609.224(1) at Part 3.3 on the original Form I-918 Supplement B and adding Minn. Stat. Ann. § 121A.031 (bullying) and 609.02(1) and (10) (definition of “crime” and “assault” respectively) to the second Form I-918 Supplement B. The Petitioner submitted no statutory analysis to demonstrate that misdemeanor assault under Minn. Stat. Ann. § 609.224(1) is substantially similar to the nature and elements of felonious assault as found in Minn. Stat. Ann. § 609.221-223. As the record does not demonstrate that the crime of felonious 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.

On appeal, the Petitioner also states that fifth degree assault under Minnesota law is a crime of violence and thus she is a victim of qualifying criminal activity. The Petitioner cites the Minnesota anti-bullying statutes as proof that acts of violence within schools are particularly harmful and that bullying has been known to lead to suicide. Although we sympathize with the physical and mental trauma that the Petitioner endured as a result of the misdemeanor assault, our inquiry is limited to the nature and elements of the statutes in question and not the facts of the Petitioner’s individual circumstances. The certifying official identified only misdemeanor assault as the crime investigated or prosecuted. The additional statutes cited on the second Form I-918 Supplement B do not provide a cause of action or punishment; rather, they include definitions and an administrative framework for schools and other organizations to address bullying.

#### B. Substantial Physical or Mental Abuse

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

#### C. 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 information concerning such a crime or activity, as required by section 101(a)(15)(U)(i)(II) of the Act.

D. Possesses Information and Helpfulness to Law Enforcement

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 subsection 101(a)(15)(U)(i)(III) of the Act.

E. Jurisdiction

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

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, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not established that she was the victim of a qualifying crime. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-E-S-F-*, ID# 14632 (AAO Oct. 14, 2015)