



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

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

MATTER OF R-N-R-M-

DATE: OCT. 19, 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: . . .

false imprisonment; . . . 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

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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 August 1998, without admission, inspection 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 May 25, 2012. The Director subsequently issued a request for evidence (RFE) establishing, among other things, that the claimed criminal activity set forth on the Form I-918 Supplement B was a qualifying criminal activity or substantially similar to one of the qualifying criminal activities enumerated at section 101(a)(15)(U)(iii) of the Act. 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 the denial of the Form I-918, asserting that she was a victim of the qualifying crime of false imprisonment and of the offense of felony battery, which she contends is substantially similar to the qualifying crime of felonious assault.

We conduct appellate review on a *de novo* basis.

## III. ANALYSIS

The Form I-918 Supplement B that the Petitioner submitted was signed on May 22, 2012 by [REDACTED], [REDACTED] Police Department, [REDACTED] California (certifying official). The certifying official marked the boxes for false imprisonment and felonious assault in Part 3.1 of the certification, which inquire about the type of criminal activity of which the Petitioner was a victim. In Part 3.3, inquiring about the corresponding statutory citations for the criminal activities investigated or prosecuted, the certifying official stated that the "[v]ictim complains of false imprisonment (CA Pen. Code § 236 & assault/battery (§§240-245)," and made a handwritten notation adding "243(d) PC," relating to the offense of battery under California law.

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### A. Qualifying Criminal Activity

On appeal, the Petitioner asserts that the denial should be reversed because she provided “multiple pieces” of corroborating evidence, including the Form I-918 Supplement B, which names her as a victim of qualifying criminal activity. 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). A full review of the record shows that the Petitioner has not established that she is a victim of the qualifying criminal activities of false imprisonment or felonious assault, as she maintains. 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. Although the certifying official marked the boxes for false imprisonment and felonious assault in Part 3.1 in the certification, the record does not establish that these offenses were actually detected<sup>1</sup>, investigated or prosecuted. In Part 3.3, rather than listing the corresponding criminal statutes for the offenses the certifying agency actually investigated and/or prosecuted, the certifying official indicated instead that the “[v]ictim complains” of false imprisonment and assault/battery, and provided the corresponding criminal statutes, adding also by hand “243(d) PC,” relating to the offense of battery.

According to the initial police narrative, the certifying agency initially encountered the Petitioner on [REDACTED], 2011 after she “flagged down” an officer while “crying and extremely intoxicated.” She threatened to commit suicide and the officer committed her to an institution for 72 hours per Cal. Welf. & Inst. Code § 5150. The case was closed thereafter. A second narrative shows that the Petitioner subsequently returned to the police department on [REDACTED] 2011, and indicated that she had been “beaten up by an unknown Polynesian female,” without further detail. The police report was amended to include the offense of simple assault as the “means of attack.” The officer recommended that the Petitioner’s case be filed as inactive due to lack of information about the suspect. The third narrative states that the Petitioner submitted a written affidavit to the certifying agency, via her immigration attorney, on May 22, 2012, nearly a year after the incident, and the same day the Form I-918 Supplement B was executed. The narrative states that the affidavit provided details of the [REDACTED] 2011 incident, asserting that the Petitioner had been physically assaulted, falsely imprisoned, and suffered injury. The police report was amended and the offense reclassified as a felony battery under Cal. Penal Code § 243(d), but the matter remained closed for lack of suspect information. The police report does not indicate, and the certifying official does not explain, why the report was amended approximately a year after the criminal offense was committed based solely on the Petitioner’s written account.

In sum, the Form I-918 Supplement B was issued based solely on the Petitioner’s complaint. Neither the certifying official’s statement on the certification at Part 3.3, nor the underlying police report, demonstrate that the offenses of false imprisonment and felony battery were detected,

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<sup>1</sup> The term “investigation or prosecution,” as used in section 101(a)(15)(U)(iii) of the Act, also refers to the “detection” of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

investigated, or prosecuted. Accordingly, the Petitioner has not established that she is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

B. Substantial Physical or Mental Abuse

As the Petitioner has not established 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.

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 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.

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

#### IV. CONCLUSION

On appeal, the Petitioner has not overcome the grounds for denial, as she has not demonstrated she was a victim of one of the qualifying criminal activities listed at section 101(a)(15)(U)(iii) of the Act. Consequently, the Petitioner 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.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of R-N-R-M-*, ID# 13987 (AAO Oct. 19, 2015)