



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

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

MATTER OF D-C-I-

DATE: SEPT. 2, 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: she was the victim of qualifying criminal activity; she suffered resultant substantial physical or mental abuse; she possessed information regarding qualifying criminal activity; she was helpful in the investigation or prosecution of qualifying criminal activity; or 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. 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);
 - (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[.]

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 . . . ;

(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 2000 pursuant to a valid nonimmigrant B-2 tourist visa. The Petitioner filed a Form I-918 Petition for U Nonimmigrant Status with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on October 30, 2012. On October 9, 2013, the Director issued a Request for Evidence (RFE), that the crime listed on the law enforcement certification was a qualifying crime among other issues. 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, which the Petitioner has timely appealed. On appeal, the Petitioner claims that, because the assault was on her minor son, the assault was felonious under Oregon law. In addition, she states that the perpetrator then attempted to alter his appearance in keeping with the crime of obstruction of justice and she qualifies for U nonimmigrant status on the basis of that crime as well.

In her September 6, 2012 and December 31, 2013 declarations, the Petitioner stated that, after returning home from her son’s football game on November 11, 2005, a van hit the side of her vehicle and continued travelling down the road. She stated that both her husband, in the vehicle that had been struck, and her minor son, in a second vehicle, followed the van down the road until they were able to overtake it in front of a police station. The Petitioner exited the vehicle to get help from the police while the van driver reversed, narrowly missing her, and left the scene. The Petitioner’s minor son was able to catch up with the van and attempted to restrain the van’s driver until police could arrive on the scene. The van driver bit the Petitioner’s son on the finger during his escape, and

(b)(6)

the injury required medical attention. Later that night, the police found the van driver and asked the Petitioner's son to identify him, which he was unable to initially do because the van driver had shaved his head. After realizing that the van driver had altered his appearance, the Petitioner's son was able to make a positive identification.

The Form I-918 Supplement B that the Petitioner submitted was signed by [REDACTED], Records Supervisor with the [REDACTED] Oregon Police Department (certifying official) on August 28, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as "Obstruction of Justice," "Other: False Police Report," and "Attempt to commit any of the named crimes." In Part 3.3, the certifying official referred to Oregon Revised Statute (ORS) §§ 811.700 and 163.160 as the criminal activity investigated or prosecuted. In Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, she indicated that the Petitioner's car was hit by a man who then fled the scene. The certifying official stated that the van driver drove over a curb in front of the police station to escape the Petitioner and that the Petitioner's husband and son found the van driver and her son attempted to restrain him until the police could arrive. The van driver again escaped after biting the Petitioner's son's hand. The certifying official also noted that the van driver falsely reported his vehicle as stolen and shaved his head in an attempt to avoid responsibility for the hit-and-run accident. The certifying official stated in Part 3.6 that the Petitioner's son sustained a bite on his hand and was transported by ambulance to a hospital for treatment.

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. The Petitioner was not the Victim of Qualifying Criminal Activity

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 crimes investigated, violations of ORS 811.700 and ORS 163.160, 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. Here, none of the criminal activities listed by the certifying official at Part 3.1 of the Form I-918 Supplement B match the criminal activity investigated or prosecuted, as listed at Part 3.3 of the Form I-918 Supplement B. The [REDACTED] Oregon Police Department report indicates that the offenses investigated was Failure to perform duties of a driver when property is damaged under ORS § 811.700 and assault in the fourth degree under ORS § 163.160.

1. Failure to Perform Duties of a Driver under Oregon Law is not Qualifying Criminal Activity

"Failure to perform duties of driver when property is damaged" is defined under Oregon law as damaging property through the operation of a motor vehicle and failing to stop at the location of the damage, remain on the scene, and exchange identifying information with the person whose property

was damaged. ORS § 811.700. We do not find and the Petitioner did not assert that this statute constituted or was substantially similar to any qualifying criminal activity as provided for in the Act.

2. Assault in the Fourth Degree under Oregon 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. Under Oregon law, fourth degree assault is defined as:

- (1) A person commits the crime of assault in the fourth degree if the person:
 - (a) Intentionally, knowingly or recklessly causes physical injury to another; or
 - (b) With criminal negligence causes physical injury to another by means of a deadly weapon.
- (2) Assault in the fourth degree is a Class A misdemeanor.
- (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:
 - (c) The assault is committed in the immediate presence of, or is witnessed by, the persons or the victims minor child or stepchild or a minor child residing within the household of the person or victim; or . . .
- (4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

ORS § 163.160. An aggravated or felonious assault is defined as an assault involving intentionally causing serious physical injury, recklessly causing serious physical injury through use of a deadly weapon, causing serious physical injury to a child under ten years old, and assault against protected classes in addition to the enumerated subsection above. ORS §§ 163.185, 163.175, 163.165.

Assault under ORS § 163.160 contains subsections under which simple, misdemeanor assault under the statute becomes felonious assault. For example, subsection 3(c) of ORS § 163.160 provides that if an assault is “committed in the immediate presence of, or is witnessed by, the person’s or the victim’s minor child or stepchild or a minor child residing within the household of the person or victim”, then the assault should be considered felonious assault. On appeal, the Petitioner claims that, because the assault was committed on a minor and that he was present and witnessed the assault, the assault should be considered felonious assault under subsection 3(c) of ORS § 163.160. However, the proper inquiry is not an analysis of the factual details underlying the criminal activity to see what crime or subsection of a statute could have been investigated or prosecuted by the certifying agency, but instead the proper inquiry assesses the nature and elements of the crime that was actually investigated as compared to the qualifying crimes. *See* 8 C.F.R. § 214.14(a)(9). The police report and citation in the record indicates that the crimes investigated were misdemeanor hit and run and simple assault. Subdivision 1 of ORS § 163.160 contains elements of simple assault and indicates that it is a misdemeanor. Accordingly, the Form I-918 Supplement B does not contain the requisite information to demonstrate that felonious assault was detected, investigated, or prosecuted.

(b)(6)

3. Criminal Activity on Form I-918 Supplement B is not Qualifying Criminal Activity

The Petitioner also asserts on appeal that the van driver was guilty of obstruction of justice, a qualifying crime, because he filed a false police report that his van was stolen and he shaved his head in an attempt to conceal his identity after breaking free from the Petitioner's son. The Form I-918 Supplement B at Part 3.1 lists "Obstruction of Justice," "Other: False Police Report", and "Attempt to commit any of the named crimes" as the criminal activity of which the Petitioner was a victim. Despite listing these crimes at Part 3.1, however, no other part of the Form I-918 Supplement B indicates that the [REDACTED] Oregon Police Department investigated Obstruction of Justice, a false police report or any attempt to commit these crimes, and the certifying official does not explain why she listed those crimes at Part 3.1 on the Form I-918 Supplement B indicating that the petitioner was the victim of those criminal activities. In addition, none of the police reports submitted in support of the Form I-918 contain any reference to the investigation of the commission or attempted commission of obstruction of justice or filing a false police report. 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). As stated above, our inquiry does not consist of what crime could have been investigated or prosecuted but, instead, we assess the nature and elements of the crime that was actually investigated.

The petitioner, therefore, did not establish that she is the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(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 has also failed to demonstrate 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 failed to establish 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 failed to establish 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 failed to establish 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, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The appeal is dismissed. The petition remains denied.

Cite as *Matter of D-C-I*, ID#14102 (AAO Sept. 2, 2015)