



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

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

MATTER OF P-T-P-P-

DATE: SEPT. 25, 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.

On appeal, the Petitioner claims that he suffered substantial physical and mental abuse as a result of being a victim of harassment, which he claims is substantially similar to felonious assault. In support of his claim, 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[.]

Felonious assault is listed as qualifying criminal activity 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[.]

...

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the

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qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

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 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 on June 7, 2000, 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 July 10, 2013. The Director denied the Form I-918 on January 30, 2015. The Petitioner timely appealed the denial. On appeal, the Petitioner claims that the harassment to which he was subjected was substantially similar to felonious assault because threats were made against his life.

The Form I-918 Supplement B was signed by Commander of Investigation, [REDACTED] Washington Police Department (certifying official), on January 10, 2013. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as “Other: Info. Report Harassment.” In Part 3.3, the certifying official referred to the Revised Code of Washington (R.C.W.) § 9A.46.020, harassment, 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 indicated that an informational case had been opened, but no charges were filed. 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 had “no known physical injury.”

## 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.

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A. The Form I-918 Supplement B was Timely

The regulation requires that a Form I-918 Supplement B be signed by the certifying official within the six months preceding the date that the Petitioner filed the Form I-918. 8 C.F.R. § 24.14(c)(2)(i). The condition that the Form I-918 Supplement B must be signed within the six month period before the filing date of the Form I-918 U petition was set by USCIS “to seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007). The Petitioner submitted his Form I-918 on July 10, 2013 with the Form I-918 Supplement B signed exactly six months before, on January 10, 2013. As a result, we withdraw that portion of the Director’s decision holding that the Form I-918 Supplement B was not dated within six months of the filing of the Form I-918.

B. The Petitioner was not the Victim of Qualifying Criminal Activity

The Form I-918 Supplement B and Case Report from the [REDACTED] Police Department indicate that harassment was investigated. The crime of harassment 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 harassment 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.

Harassment under the Revised Code of Washington occurs when a person threatens to cause bodily injury to another or physical damage to the property of another. Wash. Rev. Code § 9A.46.020. Felony harassment occurs, *inter alia*, when a person harasses another person “by threatening to kill the person threatened or another person . . . .” Wash. Rev. Code § 9A.46.020(20)(b). Assault is not defined by Washington law, so Washington courts apply the common law definition of assault in criminal cases. *Clark v. Baines*, 84 P.3d 245, 247 n.3 (Wash. 2004). Three common law definitions of criminal assault are recognized in Washington: “(1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.” *Id.* (quoting *State v. Walden*, 841 P.2d 81, 83 (Wash. Ct. App. 1992)). Felonious assault under the Washington Criminal Code involves an assault with a deadly weapon or that causes bodily injury. *See* Wash. Rev. Code Ann. §§ 9A.36.011 and 9A.36.021. Felonious assault in Washington also includes assault against certain protected classes and assault with intent to commit a felony. Wash. Rev. Code Ann. §§ 9A.36.021 and 9A.36.031.

No elements of harassment under Wash. Rev. Code §§ 9A.46.020 are similar to felonious assault under Wash. Rev. Code §§ 9A.36.011, 9A.36.021, and 9A.36.031. The statute investigated by the

certifying agency, Wash. Rev. Code §§ 9A.46.020, involves communicating threats to do bodily harm or harm to property. There is no indication in the record that felony harassment was the basis for the Form I-918 Supplement B. Therefore, the offenses are not substantially similar.

Qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. The only crime certified at Part 3.3 of the Form I-918 Supplement B was harassment, and the Case Report noted that the crime reported by the Petitioner was R.C.W. § 9A.46.020 (harassment). The Case Report also indicates that, “[t]he threats to place [Petitioner] in jail and to make him disappear were not defined enough for me [the reporting police officer] to file harassment charges . . . .” There is no evidence in the record that the certifying agency detected or investigated an attempted or actual felonious assault or any other qualifying crime. The Petitioner has not shown that any crime other than harassment was detected or investigated by the law enforcement agency.

On appeal, the Petitioner claims that the facts of his case “involved and/or was similar to felonious assault . . . because it involved a threat to kill him that placed him in apprehension of harm.” The Petitioner cited *State v. Leming*, 138 P.3d 1095 (Wash. App. 2006) to show that harassment is the same as felonious assault in the State of Washington. In that case, in which an actual physical assault and threats to harm occurred, the court held that the prosecution had to prove the same set of facts to convict under both R.C.W. § 9A.36.021(1)(e) (second degree assault) and R.C.W. § 9A.46.020 (harassment). 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 crime that was actually investigated and the qualifying crimes. See 8 C.F.R. § 214.14(a)(9). As stated above, our inquiry does not consist of what crimes could have been investigated or prosecuted but, instead, we assess the nature and elements of the crime that was actually investigated. There is no indication that felonious assault was investigated. The Petitioner is, therefore, not the victim of any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

## 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 he was the victim of a qualifying crime. He 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.

Cite as *Matter of P-T-P-P-*, ID#14258 (AAO Sept. 25, 2015)