



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

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

MATTER OF M-A-C-F-

DATE: AUG. 31, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the crimes investigated or prosecuted were qualifying crimes or substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Further, as qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification, the Director determined that the Petitioner necessarily did not meet any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

The Petitioner filed an appeal. We summarily dismissed the appeal, as the Petitioner did not identify any erroneous conclusion of law or statement of fact by the Director. The Petitioner subsequently filed a motion to reopen and a motion to reconsider. We denied the motions, as they did not meet the filing requirements.

The matter is now before us on a second motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that she was the victim of qualifying criminal activity, and that she qualifies for the nonimmigrant visa classification.

Upon review, we will deny the motions.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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[.]

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;

(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.

The regulation at 8 C.F.R. § 214.14(a) provides the following relevant definition:

(3) *Certifying official* means

(i) 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

(ii) A Federal, State, or local judge.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner is a citizen of Mexico who entered the United States without inspection, admission, or parole. She filed the Form I-918, Petition for U Nonimmigrant Status (U petition) and Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B). Based on the evidence in the record, as supplemented on motion, the Petitioner has not established her eligibility.

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A. Qualifying Criminal Activity

1. Criminal Activity Certified as Being Detected,¹ Investigated, or Prosecuted

Along with the filing of the instant U petition, the Petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), signed by [REDACTED] paralegal, [REDACTED] District Attorney's Office, [REDACTED] California (certifying official). At Part 3.3 of the Supplement B, the certifying official listed California Penal Code (Cal. Penal Code) sections 594(a) and (b)(1) (felony vandalism), 243(b) (battery), and 240 (assault) as the statutory citations for the criminal activity that was investigated or prosecuted. At part 3.1 of the Supplement B, the certifying official indicated that the offense committed against the Petitioner involved the qualifying crime of felonious assault.

On appeal, the Petitioner contends that the record establishes that she was a victim of felonious assault, a qualifying crime. As defined in 8 C.F.R. § 214.14(a)(14), a "victim" for purposes of U classification is a petitioner who has suffered harm as a result of the commission of qualifying criminal activity. The certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity or that a qualifying crime was investigated or prosecuted. Rather, it is part 3.3 which establishes the crime or crimes that the certifying agency detected, investigated, or prosecuted that resulted in a petitioner's victimization. The purpose of part 3.1 is only to identify the general category of criminal activity to which the offense(s) in part 3.3 may relate. *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007) (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations).

Here, the certifying official indicated that the Petitioner was a victim of felonious assault in part 3.1 of the Supplement B. As noted, however, the certifying official listed only the statutes for felonious vandalism, battery, and assault. Further, the certifying official's indication at Part 3.1 that the Petitioner was the victim of a felonious assault is without support in the record. The police incident report lists the crime investigated as Cal. Penal Code section 594(b)(1), felony vandalism, and the narrative report indicates that the criminal defendant was booked under Cal. Penal Code section 594(b)(1), felony vandalism. Court minutes of the Superior Court of the State of California, [REDACTED] indicate that the criminal defendant was charged with felony vandalism under Cal. Penal Code sections 594(a) and (b)(1), misdemeanor battery under Cal. Penal Code section 243(b),² and

¹ The term "investigation or prosecution," as used in section 101(a)(15)(U)(i) of the Act, also includes the "detection" of a qualifying crime or criminal activity. 8 C.F.R. § 214.14(a)(5).

² Cal. Penal Code section 243(b) describes the criminal penalties for committing battery against a defined class of persons, including a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties. The Petitioner does not claim to be a member of one of these classes. Accordingly, the record does not reflect that Cal. Penal Code section 243(b) was investigated or prosecuted with respect to criminal activity involving the Petitioner, and we will not further discuss battery in this case.

misdemeanor assault under Cal. Penal Code section 240. The certifying official does not explain why he indicated that a felonious assault against the Petitioner was investigated or prosecuted, when the record reflects that felony vandalism and misdemeanor assault were investigated or prosecuted. We recognize that qualifying criminal activity may occur during the commission of a non-qualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the Petitioner did not provide any evidence showing that the certifying agency or another law enforcement agency actually detected, investigated, or prosecuted the qualifying offense of felonious assault as having been committed against the Petitioner.

Similarly, in describing the criminal activity investigated at part 3.5 of the Supplement B, the certifying official did not state that the perpetrator had been charged with felonious assault. At Part 3.5, the certifying official stated that the criminal incident occurred when the Petitioner was parked in a parking lot. The certifying official described the criminal defendant “chasing a juvenile male. The juvenile ran to the victim’s vehicle and entered the front passenger seat . . . [The criminal defendant] starts yelling at [the Petitioner] saying that she was the mother of the juvenile then [the criminal defendant] kicked the driver’s door causing damage.”

On motion, the Petitioner asserts that the criminal defendant falsely imprisoned her, and that false imprisonment is a qualifying crime under section 101(a)(15)(U)(iii) of the Act. We may not, however, consider criminal activity that is not certified by the certifying agency, and the certifying official did not indicate on the Supplement B that false imprisonment was investigated or prosecuted. *See* section 214(p)(1) of the Act. Accordingly, the Petitioner was not a victim of false imprisonment in this case.

2. The Certified Crimes are not Substantially Similar to Qualifying Criminal Activity

The crimes of felony vandalism and misdemeanor assault are not specifically listed as qualifying crimes 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 offenses that were investigated or prosecuted 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.

Cal. Penal Code section 594(a) defines vandalism, in part, as maliciously defacing, damaging, or destroying real or personal property belonging to another. Cal. Penal Code section 594(b)(1) classifies the punishment for vandalism involving property damage of \$400 or more as a felony. *See* Cal. Penal Code section 17. Cal. Penal Code section 240 defines assault as: “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code section 241 classifies assault under Cal. Penal Code section 240 as a misdemeanor. *See* Cal. Penal Code section 17.

(b)(6)

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No elements of felony vandalism or simple assault under Cal. Penal Code sections 594(a) and (b)(1), and section 240, respectively, are similar to felonious assault under Cal. Penal Code sections 244, 244.5, 245, 245.3, or 245.5. Felony vandalism involves damage to property and not to a person. Simple assault involves an attempt to commit a violent injury on another person. Felonious assault in California involves an attempt, with a present ability, to commit violent injury upon another with an aggravating factor such as the use of a weapon or caustic/flammables substances, or assault against a protected class as a necessary component. There is no evidence that the certifying agency investigated an attempted or actual felonious assault against the Petitioner.

On motion, the Petitioner claims that the criminal defendant violently assaulted her car with a force that would have produced great bodily injury, if she were not protected by the car door, and as such, that she was a victim of felonious assault. She asserts that assault is an unlawful attempt to commit a violent injury against another person. However, as stated above, the standard for inclusion as a qualifying criminal activity is that the crime investigated or prosecuted is “substantially similar” to one of the enumerated crimes, and 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 felony vandalism and simple assault are 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 qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

3. Validity of the Supplement B

Upon review, the Supplement B does not satisfy the regulatory requirements for a certification, because the record does not establish that it was properly executed by a certifying official. A certifying official is defined by regulation at 8 C.F.R. § 214.14(a)(3) as either 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 a federal, state or local judge. Here, [REDACTED] who executed the Supplement B, self-identifies as a paralegal for the [REDACTED] District Attorney. The record does not show that [REDACTED] is employed in a supervisory capacity and that he has been specifically designated by the District Attorney to issue the Supplement B, or that he is a judge. For this additional reason, the U petition may not be approved.

B. Substantial Physical or Mental Abuse

As the Petitioner did not establish that she was a victim of qualifying criminal activity, she cannot show 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 shown that she possesses information concerning such a crime or 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 demonstrated 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 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.

III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-A-C-F-*, ID# 17781 (AAO Aug. 31, 2016)