



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

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

MATTER OF K-A-M-B-

DATE: FEB. 5, 2016

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, 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[.]

Clause (iii) of section 101(a)(15)(U) of the Act lists qualifying criminal activity and states:

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: . . . felonious assault; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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:

(a) Definitions. As used in this section, the term:

. . . .

(9) Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; 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; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

. . . .

(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

Section 214(p) of the Act, 8 U.S.C. § 1184(p), further prescribes, in pertinent part:

....

(4) Credible Evidence Considered

In acting on any petition filed under this subsection, the consular officer or the [Secretary of Homeland Security], as appropriate, shall consider any credible evidence relevant to the petition.

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. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims she entered the United States in May 1999 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 July 9, 2012. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on the same day. The Director issued a request for evidence (RFE) that, among other things, the crime listed on the Form I-918 Supplement B was qualifying criminal activity and that the Petitioner suffered substantial mental or physical abuse as a result of having been the victim of such activity. 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 Form I-192. The Petitioner filed a timely appeal. On appeal, the Petitioner submits a brief in which she claims that she was the victim of a qualifying criminal activity under the regulation and that she was traumatized and permanently affected as a result of her victimization.

III. ANALYSIS

We review these proceedings de novo. Based on the evidence in the record, we withdraw that part of the Director's decision concerning qualifying criminal activity, but dismiss the appeal as the evidence in the record does not demonstrate that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity.

A. Qualifying Criminal Activity was Certified

The Petitioner submitted a Form I-918 Supplement B signed by [REDACTED] Chief of Police, [REDACTED] Missouri, Police Department (certifying official), on May 23, 2012. The certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 of Form I-918 Supplement B as "armed robbery" in the space indicating "other." In Part 3.3, the certifying official referred to Missouri Revised Statutes (MRS) § 569.020 (robbery in the first degree). At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the perpetrators fired a gun toward the Petitioner during an armed robbery at her place of employment. At Part 3.6, which asks for a description of any known or documented injury to the Petitioner, the certifying official indicated that there were "[n]o physical injuries to the victim."

The [REDACTED] Missouri, Police Department Original Incident Report listed the type of incident as "Armed Robbery." The crime of robbery 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 robbery 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.

Under the MRS a "person commits the crime of robbery in the first degree when he forcibly steals property and in the course thereof he, or another participant in the crime, (1) Causes serious physical injury to any person; or (2) Is armed with a deadly weapon; or (3) Uses or threatens the immediate use of a dangerous instrument against any person; or (4) Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument." *See* Mo. Rev. Stat. § 569.020 (West 2011). The statutory elements of robbery in the first degree are substantially similar to those for felonious assault, as defined under Mo. Stat. §§ 565.050 and 565.060 (first and second degree assault, respectively). Missouri law provides that a "person commits the crime of assault in the first degree if he attempts to kill or knowingly causes or attempts to cause serious physical injury to another person." *See* Mo. Stat. § 565.050 (West 2011). Assault in the first degree is a felony offense.

Both robbery in the first degree and felonious assault/assault in the first degree under Missouri law require, as an element of the offense, the causing of serious physical injury to the victim.

Accordingly, in comparing the statutory elements of robbery in the first degree and felonious assault/assault in the first degree, we find that the offenses are substantially similar. *See* 8 C.F.R. § 214.14(a)(9). The Director's determination to the contrary will be withdrawn.

B. Substantial Physical or Mental Abuse

Nonetheless, the record as presently constituted does not establish that the Petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. *See* 8 C.F.R. § 214.14(b)(1).

At Part 3.6 of the Form I-918 Supplement B, which asks for a description of any known or documented injury to the Petitioner, the certifying official stated that there were no physical injuries to the Petitioner. In her affidavit, the Petitioner stated that after the robbery, she had nightmares, anxiety, and panic attacks. The Petitioner described receiving therapy and medication in the past and indicates that she still has nightmares. The Petitioner did not include further details about the mental harm suffered as a result of the robbery or otherwise demonstrate how the criminal activity has impacted and continues to impact the Petitioner's daily life and overall well-being. The Petitioner also submitted a medical report, dated in February 2012, that indicated that the Petitioner was being treated for depression and described feeling anxious and paranoid after witnessing a robbery. The report did not provide, however, further substantive information regarding how witnessing a robbery affected the Petitioner or continues to affect her. Another medical report, dated in April 2012, stated that in February 2012 the Petitioner was diagnosed with depression, but did not mention the robbery. On appeal, the Petitioner did not provide any additional details to demonstrate that she suffered from and continues to suffer from serious harm as a result of the robbery.

Ultimately, the Petitioner has not provided sufficient evidence to show the severe nature of the injury inflicted or of the harm suffered, or that there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Consequently, the Petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act which requires her to demonstrate that she suffered substantial abuse resulting from qualifying criminal activity.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has not been met.

Matter of K-A-M-B-

ORDER: The appeal is dismissed.

Cite as *Matter of K-A-M-B-*, ID# 15257 (AAO Feb. 5, 2016)