



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

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

MATTER OF M-N-T-S-

DATE: FEB. 29, 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 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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Guatemala who claims to have entered the United States on August 30, 2004, 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, and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on November 26, 2013. The Director subsequently issued a Request for Evidence (RFE) seeking, in part, to obtain further evidence that the Petitioner was a victim of qualifying criminal activity. In response, the Petitioner submitted evidence which the Director found insufficient to establish the Petitioner's eligibility.

The Director denied the Form I-918 because the record did not establish that the Petitioner was a victim of qualifying criminal activity, and as such she did not meet the remaining criteria for U nonimmigrant classification. The Petitioner timely appealed. On appeal, the Petitioner reasserts her eligibility and submits additional evidence.

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. Certified Criminal Activity

On the Form I-918 Supplement B, the certifying official listed the criminal activity of which the Petitioner was a victim at Part 3.1 as involving or similar to felonious assault. The certifying official listed California Penal Code section 211 (robbery) as the statutory citation for the criminal activity that was investigated or prosecuted at Part 3.3. At Part 3.5, the certifying official briefly described the criminal activity, stating that two suspects attacked the Petitioner and took her purse.

Although the Form I-918 Supplement B indicates at Part 3.1 that a crime involving or similar to felonious assault was investigated or prosecuted, the certifying official at Part 3.3 listed the statutory citation for robbery as the crime that was investigated or prosecuted. The record does not contain any police reports,¹ transcripts of proceedings, or other law enforcement documentation explaining why the certifying official provided a citation for robbery, if a felonious assault against the Petitioner was actually investigated or prosecuted. The Petitioner asserts that she was unable to provide additional documentation from law enforcement, as the individual suspects were juveniles. Nevertheless, it is the Petitioner's burden to demonstrate eligibility for U-1 nonimmigrant status. *See* 8 C.F.R. § 214.14(c)(4). 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.² We recognize that qualifying criminal

¹ On appeal, the Petitioner submits an Incident Report from the ██████████ Sheriff's Department, but the Report does not mention or indicate in any way that felonious assault was investigated or prosecuted.

² 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).

activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Here, the evidence of record does not demonstrate that the crime of felonious assault was investigated or prosecuted.

B. Robbery under California Law is not Qualifying Criminal Activity

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 California Penal Code in effect at the time of the criminal activity, “[r]obbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211 (West 2011). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2011). For an assault in California to be classified as a felony, there must be an aggravating factor involved. Felonious assault in California involves assault with a deadly weapon or force likely to produce great bodily injury, assault with caustic chemicals or flammable substances, or assault against a specific class of persons (such as peace officers, fire fighters, custodial officers or school employees). Cal. Penal Code §§ 244, 244.5, 245, 245.3, 245.5 (West 2011).

No elements of robbery under Cal. Penal Code § 211 are similar to felonious assault under Cal. Penal Code §§ 244, 244.5, 245, 245.3, or 245.5. The statute investigated or prosecuted in this case involves taking personal property from an individual through the use of force or fear, and does not require violent or great bodily injury, the use of a weapon or caustic/flammables substances, or assault against a protected class as a necessary component. Felonious assault in California, however, involves an attempt, with a present ability, to commit violent injury upon another with an aggravating factor such as those listed above. On appeal, the Petitioner asserts that the crime she suffered from is similar to felonious assault because of the force used against her, the number of attackers, and the age of her attackers. Additionally, the Incident Report indicates that one of the suspects in her attack was in possession of a handgun. 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 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 the criminal offense of which she was a victim, robbery, are substantially similar to those of 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.

C. Substantial Physical or Mental Abuse

The Director determined that the Petitioner did not establish that she suffered substantial physical or mental abuse as a result of the offense described in the Form I-918 B Supplement, and further, that as the record did not establish that the Petitioner was a victim of qualifying criminal activity, she could not establish that she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

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.

D. 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.

E. 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.

F. 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.

IV. CONCLUSION

The Petitioner has not demonstrated that the crime investigated or prosecuted, robbery, is a qualifying crime or substantially similar to any of the 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, she has not met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

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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; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-N-T-S-*, ID# 15526 (AAO Feb. 29, 2016)