



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

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

MATTER OF J-R-T-R-

DATE: JULY 15, 2016

APPEAL OF VERMONT SERVICE CENTER 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 had not established that she was a victim of qualifying criminal activity or criminal activity that was substantially similar to one of the qualifying crimes, and consequently, had also not demonstrated that: she suffered resultant substantial physical or mental abuse; possessed information concerning the qualifying criminal activity; had been helpful to authorities investigating or prosecuting qualifying criminal activity; and such qualifying activity occurred within the jurisdiction of the United States.

The matter is now before us on appeal. On appeal, the Petitioner did not submit a brief or any additional evidence. The Petitioner claims that the Director erred in finding that she was not the victim of qualifying criminal activity.

Upon *de novo* review, we will dismiss the appeal.

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[.]

....

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

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the *investigation or prosecution* of criminal activity described in section 101(a)(15)(U)(iii).

(Emphasis added).

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 applicant has been a victim of qualifying criminal activity the certifying official’s agency is *investigating or prosecuting*[.]

(Emphasis added).

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 . . . ;

(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. . . . ;

(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.

(Emphasis added).

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

Upon a full review of the record, the Petitioner has not overcome the Director’s grounds for denial. The appeal will be dismissed for the following reasons.

(b)(6)

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A. Certified Criminal Activity

The Petitioner is a native and citizen of El Salvador who last entered the United States without inspection, admission, or parole. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (U petition), along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B).

[REDACTED] (certifying official), signed the Supplement B. The certifying official checked the boxes marked "Attempt to commit any of the named crimes" and "Other: assault," in Part 3.1, which inquires about the criminal activity of which the Petitioner was a victim. At Part 3.3, the certifying official cited to section 22-404 of the [REDACTED] Penal Code (assault or threatened assault in a menacing manner) as the criminal statute for the charge that was investigated or prosecuted. In the Incident Report for the criminal activity, the writer indicated that the event was a "simple assault," and in subsequent letters from the [REDACTED] the Petitioner was informed that the perpetrator was charged with simple assault.

B. Qualifying Criminal Activity

The Petitioner has not established that she was a victim of a qualifying criminal activity. When determining what criminal activity a certifying agency detected,¹ investigated, or prosecuted, we look to the relevant criminal statute as provided on the Supplement B and on any accompanying reports. Here, the only criminal activity certified at Part 3.1 of the Form I-918 Supplement B is attempted assault, which is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. The certifying official further cited to the corresponding [REDACTED] Code statute for simple assault in Part 3.3 of the Supplement B. In fact, the certifying official specifically indicated that the crime investigated or prosecuted was not one of the crimes specified at Part 3 of the Supplement B by checking the boxes for attempt and "other." Notably, the certifying official did not check the box for felonious assault. The underlying investigative report in the record also indicated that the offense committed was simple assault. In subsequent correspondence from the [REDACTED] office to the Petitioner, she was informed that the perpetrator was charged with simple assault. The record lacks any evidence from the certifying official or law enforcement records that the qualifying criminal activity of felonious assault, or any other qualifying criminal activity, was also investigated or prosecuted. Accordingly, a careful review of the record does not establish that the certifying agency detected, investigated, or prosecuted a qualifying crime committed against the Petitioner.

On appeal, the Petitioner indicated on her Form I-290B, Notice of Appeal or Motion (appeal notice), that the Director erred in failing to comport to the evidentiary standard set forth in 8 C.F.R. § 214.14(c)(4) whereby USCIS may consider any credible evidence in making an eligibility determination. Although the Petitioner is correct that she may submit any credible evidence in

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

support of her U petition, this evidentiary standard is not equivalent to the Petitioner's burden of proof. When determining whether or not the Petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, USCIS "will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including [the Supplement B]." 8 C.F.R. § 214.14(c)(4). Accordingly, the mere submission of credible evidence that is relevant may not always suffice to meet the petitioner's burden of proof.

The Petitioner further noted on her notice of appeal that the Director committed a legal error in finding that she was not the victim of qualifying criminal activity. However, the Petitioner did not provide any argument or legal analysis to support her contention.²

The Petitioner has not established that the certifying agency detected, investigated, or prosecuted a qualifying crime committed against her. The Petitioner, therefore, has not established that she was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

C. Substantial Physical or Mental Abuse

As the Petitioner did not establish that she was the victim of qualifying criminal activity, she also did not establish 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 also did not establish 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 also did not 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

² In her brief in response to the RFE, the Petitioner asserted that, based on the facts, she was the victim of an assault with intent to rob and of an attempted robbery, which are crimes that are substantially similar to felonious assault, a qualifying criminal activity. However, we lack the authority to engage in a fact-based inquiry into whether the underlying conduct and facts of a non-qualifying crime also establish that other crimes occurred. Rather, our factual inquiry focuses only on whether the Supplement B and the record establish that the certifying agency detected, investigated, or prosecuted a qualifying crime. See section 214(p)(1) of the Act; 8 C.F.R. §§ 214.14(c)(2) (certification must state that the petitioner is the victim of qualifying criminal activity the certifying agency is investigating or prosecuting). Here, as discussed, our review does not establish that the certifying agency ever detected, investigated, or prosecuted the qualifying crime of felonious assault. Nor is there any evidence that the certifying agency ever detected, investigated, or prosecuted assault with intent to rob or attempted robbery, so we do not reach the issue of whether robbery or attempted robbery are substantially similar to the qualifying crime of felonious assault.

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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 also did not 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.

III. CONCLUSION

In these 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-R-T-R-*, ID# 17083 (AAO July 15, 2016)