



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

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

MATTER OF A-S-R-

DATE: MAR. 11, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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, and we dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

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[.]

.....

(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[.]

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.

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

(1) Petitioning Procedures for Section 101(a)(15)(U) Visas

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).

....

(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 citizen of Mexico who claims to have last entered the United States without inspection, admission, or parole in December 2000. The Petitioner filed the Form I-918, Petition for U Nonimmigrant Status, the Form I-918 Supplement B, U Nonimmigrant Status Certification, and the Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on June 27, 2013. The

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Director denied the Form I-918, determining that the Petitioner had not established that he was the victim of a qualifying criminal activity, suffered resultant substantial physical or mental abuse as a result of such criminal activity, possessed information about qualifying criminal activity, was helpful in the investigation and prosecution of qualifying criminal activity, and that qualifying criminal activity did not occur within the jurisdiction of the United States. On appeal, we affirmed the Director's decision. The Petitioner filed a timely motion to reconsider.

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 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). The Petitioner does not cite precedent decisions to establish that our prior decision was based on an incorrect application of law or USCIS policy and does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion reconsider will be denied. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

On motion, the Petitioner submits a brief and additional evidence. Based on the evidence in the record, as supplemented on motion, the Petitioner has not overcome our previous decision.

A. Certified Criminal Activities are not Specifically Listed as Qualifying Crimes

The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the Petitioner was the victim of criminal activity involving or similar to felonious assault, related crimes, and "other: simple robbery."¹ At Part 3.5, the certifying official indicated that: "[the Petitioner] was the victim of felonious assault on [REDACTED] 2012, by a male suspect who [he] believed was holding an object that may have been a knife when he grabbed the pendant off [his] neck." However, there is no indication on any document of record that she or any other law enforcement entity investigated or prosecuted the crime of felonious assault in relation to the Petitioner. Part 3.3 of the Form I-918 Supplement B indicates that the crimes of simple robbery (Minn. Stat. section 609.24) and aggravated robbery (Minn. Stat. section 609.245) were investigated or prosecuted. The police report indicated that the Petitioner was the victim of "Robbery of Person" under "609.24." The record contains no evidence of the detection, investigation, or prosecution of felonious assault. The Petitioner is, therefore, not the victim of the qualifying crime of felonious assault.²

¹ On appeal, we declined to consider the initially filed Form I-918 Supplement B, as the record did not establish that the certifying official was authorized to sign it. On motion, the Petitioner does not submit further evidence indicating that Lieutenant [REDACTED] the certifying official on the initial Form I-918 Supplement B, had the authority to sign the document. As such, we will consider only the Form I-918 Supplement B signed by [REDACTED] and submitted in response to the Director's request for evidence.

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).

B. The Certified Criminal Activities are not Substantially Similar to Any Qualifying Criminal Activity

Although simple robbery and aggravated robbery are not specifically listed as qualifying criminal activities at section 101(a)(15)(U)(iii) of the Act, we also consider any “similar activity” to the listed qualifying criminal activities. 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). Accordingly, the Petitioner must demonstrate that the nature and elements of either of the certified criminal activities, simple robbery or aggravated robbery, are substantially similar to those for felonious assault. The inquiry is not fact-based, but rather entails a comparison of the nature and elements of the statutes in question.

In our July 31, 2015, decision, incorporated here by reference, we compared the nature and the elements of the two Minnesota statutes certified at Part 3.3 of the Form I-918 Supplement B to felonious assault under Minnesota law. On motion, the Petitioner asserts that in other decisions, we compared the relevant state crimes to qualifying criminal activity as set forth in the Model Penal Code, and thus we unfairly used the Minnesota statute rather than the Model Penal Code in this case.³ We will consider the Petitioner’s assertion as a request to compare the Minnesota statutes at issue in this case to the qualifying crime of felonious assault as set out in the Model Penal Code.

Felonious assault is defined in the Model Penal Code section 211.1(2), which provides that a person is guilty of aggravated assault who:

- (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Aggravated assault under paragraph (a) is a felony of the second degree; aggravated assault under paragraph (b) is a felony of the third degree.

Model Penal Code §§ 211.1(2)(a) and (b) (West 2014).

Simple robbery in Minnesota is defined at Minn. Stat. section 609.24 and provides that an individual commits simple robbery who “takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance.” Simple robbery does not require elements substantially similar to felonious assault

³ As the Petitioner bears the burden of proof in these proceedings, he must demonstrate that the certified criminal activity is substantially similar to a comparable federal or state statute. The Petitioner in this case did not previously request that we compare the statute at issue in this case to a comparable statute in the Model Penal Code.

under the Model Penal Code such as force which produces serious bodily injury, or use of a deadly weapon.

Aggravated robbery in Minnesota is defined at Minn. Stat. section 609.245 and provides:

Subdivision 1. First degree. Whoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both.

Subd. 2. Second degree. Whoever, while committing a robbery, implies, by word or act, possession of a dangerous weapon, is guilty of aggravated robbery in the second degree and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

Minn. Stat. §§ 609.245(1) and (2) (2014).

On motion, the Petitioner argues that the nature and the elements of the cited Minnesota robbery statutes are substantially similar to felonious assault under the Model Penal Code, and that the statutes do not need to be an exact match. The nature and the elements of the Minnesota aggravated robbery statute, Minn. Stat. sections 609.245(1) and (2), are not substantially similar to the Model Penal Code sections 211.1(2)(a) and (b). While Minn. Stat. section 609.245(1) requires either that the perpetrator be armed with a dangerous weapon, or that the victim believe that the perpetrator is armed with a dangerous weapon, the Model Penal Code section 211.1(2)(b) requires the actual use of a deadly weapon. As the certifying official did not specifically identify which subdivision of Minn. Stat. section 609.245 was investigated or prosecuted, the record does not contain the requisite information to demonstrate that the crime which was investigated is substantially similar to felonious assault. Additionally, while Minn. Stat. section 609.245(1) requires bodily injury, and section 609.245(2) does not require injury, the Model Penal Code section 211.1(2)(a) requires *serious* bodily injury. Further, Minn. Stat. section 609.245(2) requires only that the perpetrator imply possession of a dangerous weapon. Neither section 211.1(2)(a) nor 211.1(2)(b) of the Model Penal Code section has a provision substantially similar to the implied possession of a dangerous weapon.

Similarly, under Minnesota law, simple robbery is committed when an individual “takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance.” Minn. Stat. § 609.24 (2014). Simple robbery does not require elements substantially similar to a felonious assault under the Model Penal Code, as noted above, such as the attempt to cause or causing serious bodily injury, or use of a deadly weapon. “Mere force” is sufficient to commit simple robbery. *State v. Burrell*, 506 N.W.2d 34, 37 (Minn. Ct. App. 1993).

The Petitioner asserts on motion that he suffered “bodily harm” during the robbery and as such that the nature and elements of the crime are substantially similar to felonious assault. As discussed above, we do not analyze the facts of the case, but determine whether the nature and elements of the criminal statutes investigated or prosecuted are substantially similar to qualifying criminal activity.

The Petitioner also requests that we reconsider our determination that simple robbery under Minnesota law is not substantially similar to qualifying criminal activity when compared to the severity of sentences for qualifying criminal activity under Minnesota law. The Petitioner asserts that because simple robbery under Minnesota law is substantially similar to the Minnesota simple assault statute, yet carries a greater penalty than felonious assault under Minnesota law, that we should deem simple robbery as substantially similar to felonious assault. As stated previously, we look at the nature and elements of the criminal statutes that were investigated or prosecuted to determine whether they are substantially similar to the nature and elements of the comparable state or federal statute, and not at whether the sentences are substantially similar. The Petitioner has not demonstrated that simple robbery is substantially similar to felonious assault under either the Model Penal Code or Minnesota criminal statutes.

The Petitioner further asserts that in cases involving similar statutes, we have decided that aggravated robbery was substantially similar to felonious assault. The Petitioner has not shown that the statutes under discussion were the same as those in the instant case. Moreover, although 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, non-precedent decisions are not similarly binding.

Accordingly, the Petitioner has not established that the nature and elements of the certified crimes of simple or aggravated robbery are substantially similar to felonious assault under the Model Penal Code, Minnesota law, or any of the other qualifying crimes at section 101(a)(15)(U)(iii) of the Act. The Petitioner has not established that he is the victim of qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

C. Substantial Physical or Mental Abuse

On appeal, we determined that the Petitioner had not established substantial physical or mental abuse. On motion, the Petitioner asserts that we did not give sufficient weight to the evidence of psychological abuse. As the Petitioner has not established on motion that he was the victim of qualifying criminal activity, he necessarily has not established that he 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 he was the victim of qualifying criminal activity, he has also not established that he 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 he was the victim of qualifying criminal activity, he has also not established that he 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 he was the victim of qualifying criminal activity, he has also not established 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.

IV. CONCLUSION

On motion, the Petitioner has not overcome our previous determination that he was not the victim of qualifying criminal activity. He, therefore, also has not met the remaining statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(II) – (IV) of the Act. Furthermore, the Petitioner is inadmissible to the United States and his grounds of inadmissibility have not been waived.⁴ The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act.

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, the Petitioner has not met that burden.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-S-R-*, ID# 16000 (AAO Mar. 11, 2016)

⁴ The Petitioner states on motion that the Director has not adjudicated the Form I-192. The record reflects that the Director denied the Form I-192 on December 14, 2014.