



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

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

MATTER OF A-G-P-

DATE: MAY 18, 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 did not establish that the crime was investigated or prosecuted, or that robbery was a qualifying crime 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 matter is now before us on appeal. On appeal, 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 *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[.]

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 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. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Honduras who claims to have entered the United States in May 1998 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. 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 her 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 filed a timely appeal.

III. ANALYSIS

Based on the evidence in the record, as supplemented on appeal, 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 or related crimes. At Part 3.3 the certifying official listed North Carolina General Statutes section 14-87.1 (common law robbery) as the statutory citation for the criminal activity that was investigated or prosecuted. At Parts 3.5 and 3.6, the certifying official referred to the police incident report, which reflects that the crime against the Petitioner was "robbery – individual" and that the Petitioner's purse, cell phone,

(b)(6)

Matter of A-G-P-

cash and a credit card were stolen. The certifying official stated that the “robbery is a felonious assault . . .”

Although the Form I-918 Supplement B indicates at Parts 3.1 and 3.6 that a crime involving or similar to felonious assault or related crimes were investigated or prosecuted, the certifying official at Part 3.3 listed the statutory citation for the punishment of common law robbery as the crime that was investigated or prosecuted. 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.¹ On appeal, the Petitioner submits the record of conviction of her perpetrator, including copies of the arrest warrant, indictment, and judgment. The arrest warrant and the indictment show that the defendant was arrested and indicted for the offense of common law robbery in violation of N.C. Gen Stat. section 14.87-1. The judgment shows that the perpetrator was convicted of four counts of common law robbery, one of which involved the crime against the Petitioner.² The record does not contain an explanation of why the certifying official indicated that a felonious assault against the Petitioner was actually investigated or prosecuted, when the record reflects that common law robbery was 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 record of conviction does not demonstrate that the crime of felonious assault was investigated or prosecuted.

B. Common Law Robbery in North Carolina is not Substantially Similar to 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.

North Carolina prosecutes the crime of robbery as defined at common law.³ The North Carolina Supreme Court has stated that common law robbery is:

¹ 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).

² File ██████████

³ North Carolina statutes distinguish between robbery punishable as a Class G felony under N.C. Gen. Stat. section 14.87.1, the crime investigated or prosecuted in the instant case, and common law robbery with a firearm or other dangerous weapon, which is punishable as a Class D felony under N.C. Gen Stat. section 14.87. As common law robbery was the crime investigated or prosecuted in this case, we will not review North Carolina law relating to armed robbery.

the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear. . . . The felonious taking element of common law robbery requires “a taking with the felonious intent on the part of the taker to deprive the owner of his property permanently and to convert it to the use of the taker.”

(citations omitted) *State v. Moss*, 418 S.E. 2d 213, 217 (N.C. 1992). For a defendant to be found guilty of common law robbery, the state must prove beyond a reasonable doubt that: (1) the defendant took property from the person of another or in his presence; (2) the defendant carried away the property; (3) the other person did not voluntarily consent to the taking and carrying away of the property; (4) at that time, the defendant intended to deprive him of its use permanently; (5) that the defendant knew he was not entitled to take the property; and (6) the taking was by violence or by putting the person in fear. *See North Carolina Pattern Jury Instructions for Criminal Cases*, § 217.10, North Carolina Conference of Superior Court Judges, Committee on Pattern Jury Instructions (replacement June 2015).

The state of North Carolina defines felonious assault as follows:

Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. “Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

N.C. Gen. Stat. § 14-32.4 (2012).

No elements of common law robbery as defined by the North Carolina Supreme Court in *State v. Moss* and section 217.10 of the North Carolina Pattern Jury Instructions for Criminal Cases are similar to felonious assault under N.C. Gen. Stat. section 14-32.4. The crime investigated or prosecuted in this case involves taking personal property from an individual through the use of violence or fear, and does not require serious bodily injury or attempted serious bodily injury.

In her brief, the Petitioner argues that because of deficiencies in the Director’s decision, she could not adequately respond to the Director’s concerns. She states that the Director omitted and misused words, did not distinguish between findings of fact and conclusions of law, and did not perform sufficient legal analysis. The Petitioner does not demonstrate that she has been prejudiced by minor errors in the Director’s denial and RFE. The Petitioner notes that at the bottom of page two of the denial the Director omitted words from the following sentence: “USCIS does not argue that you were a victim of felony crimes but that the [] are not substantially similar to felonious assault” (omitted words bracketed). The Petitioner has not established harm resulting from this typographical error. The Petitioner states that in the RFE, the Director referred at page two to the “statute used” when it was clear that common law robbery was the certified crime. The Petitioner does not show that the Director fundamentally misunderstood the legal definition of common law robbery by her

reference to the crime as a statute. The Petitioner also faults the Director for not making factual findings in the case. As stated above, we look to the crime at issue to determine whether the nature and elements are substantially similar to a qualifying crime, not at the facts underlying the crime.

The Director's decision correctly stated that the Petitioner did not establish how common law robbery was substantially similar to felonious assault. The Petitioner submitted a copy of *State v. White*, (no citation provided), and a reference to N.C. Gen. Stat. 14-33, and argued that common law robbery is a substantially serious crime, like felonious assault. The Petitioner did not indicate the significance of *State v. White* to the instant case nor did she show that the nature and elements of common law robbery are substantially similar to felonious assault in North Carolina. It is the Petitioner's burden to demonstrate eligibility for U-1 nonimmigrant status. 8 C.F.R. § 214.14(c)(4).

On appeal, the Petitioner asserts that the criminal indictment of the perpetrator shows that the crime committed in this case is substantially similar to felonious assault, as both crimes are punished as felonies and both involve bodily injury and the threat of violence. The fact that both common law robbery and felonious assault are both felony crimes does not establish that the nature and elements of the crimes are substantially similar. The Petitioner argues further that as the criminal indictment states that the defendant stole property from the Petitioner "by violence and forcible taking of the property and by putting the victim in fear of bodily harm and the threat of violence," the crime is therefore substantially similar to felonious assault. The indictment in this case involves "bodily injury," which is not substantially similar to serious bodily injury as required in the felonious assault statute at N.C. Gen. Stat. section 14-32.4.⁴ Nor is violence, or the threat of violence, an element of the felonious assault statute at N.C. Gen. Stat. section 14-32.4.

The Petitioner has not demonstrated that the nature and elements of the criminal offense of which she was a victim, common law 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

⁴ "Serious bodily injury" as set forth in N.C. Gen. statute section 14-32.4 requires proof of more severe injury than the "serious injury" element of other assault offenses. *State v. Williams*, 563 S.E.2d 616, 619-20 (N.C. App. 2002). Whether a serious injury has been inflicted depends upon factors such as hospitalization, pain, loss of blood, and time lost at work. Evidence that the victim was hospitalized is not necessary for proof of serious injury. *State v. Hedgepeth*, 409 S.E. 2d 309, 318 (N.C. 1991)

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

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; *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 A-G-P-*, ID# 16462 (AAO May 18, 2016)