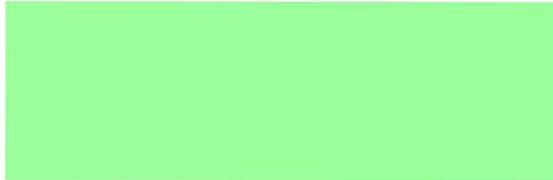


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

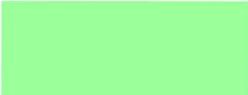


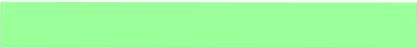
U.S. Citizenship
and Immigration
Services



Date: **JUL 05 2013**

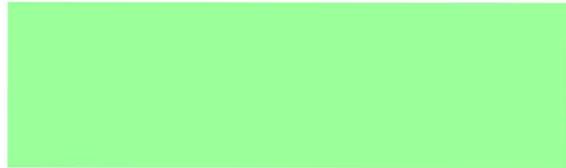
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

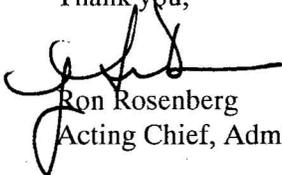


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity, and therefore could not show that he met any of the eligibility criteria for U nonimmigrant classification. The petition was denied accordingly. On appeal, counsel submits a brief.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). 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: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; 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; fraud in labor contracting (as defined at 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as

“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.” 8 C.F.R. § 214.14(a)(9).

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on October 10, 1988 without inspection, admission or parole. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on June 1, 2010. On September 16, 2010, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime and that he had suffered substantial abuse as a result of qualifying criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The director determined that the petitioner did not establish that he was a victim of qualifying criminal activity and, therefore, could not show that he met any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. The petition was denied accordingly. On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of terrorist threats, which he claims are similar to the qualifying crime of felonious assault.

Claimed Criminal Activity

According to the petitioner in his affidavits, his former employer drove by the petitioner’s mechanic shop and took pictures of his customers’ license plates. At one point, the former employer stopped the petitioner outside of his shop and threatened to harm the petitioner and his family, and to report them to immigration authorities. The petitioner and his employee called the sheriff’s office to report

qualifying criminal activities when the petitioner filed the instant form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

his former employer, but no charges were filed. Since this incident, the petitioner's former employer continues to drive by his shop almost daily.

Analysis

Upon review, we find no error in the director's decision to deny the petition. In support of his Form I-918 U petition, the petitioner submitted a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), signed by [REDACTED] the [REDACTED] Sheriff's Department (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim at Part 3.1 as "Other: terrorist threats." At Part 3.3, the certifying official listed the statutory citation of the crime investigated or prosecuted as California Penal Code (Cal. Penal Code) section 422 (criminal threats). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner reported a series of criminal threats made against him by an acquaintance, and that threats and acts of stalking by this individual have continued. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that he had no personal knowledge of any injuries to the petitioner, but that the petitioner reported suffering from anxiety as a result of the threats.

Counsel contends that the Form I-918 Supplement B is prima facie evidence of the petitioner's status as a victim. The petitioner bears the burden of proof to demonstrate his eligibility for U nonimmigrant classification. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). That burden includes showing that the petitioner was the victim of a qualifying crime that was investigated or prosecuted by a certifying law enforcement agency. The regulation at 8 C.F.R. § 214.14(c)(4) provides U.S. Citizenship and Immigration Services (USCIS) with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the petitioner submitted a Form I-918 Supplement B, the evidence in the record, including the information on the Form I-918 Supplement B, does not demonstrate that the crime of felonious assault or any similar crime was ever investigated or prosecuted. The certifying official did not indicate that the petitioner was a victim of felonious assault, nor did he list a statutory citation for felonious assault as criminal activity that was investigated or prosecuted; he only cited criminal threats. There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. The petitioner has not shown that any crime other than criminal threats was investigated or prosecuted by the law enforcement agency.

Furthermore, the petitioner has not shown that he was the victim of a *qualifying* crime. The particular crime that was certified, criminal threats, 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). 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, criminal threats under section 422 are defined, in pertinent part, as follows:

(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Cal. Penal Code § 422 (West 2013).

Assault is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West).

Under the California Penal Code, felony assault, or assault with a deadly weapon or force likely to produce great bodily injury, is defined, in pertinent part as:

(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Cal. Penal Code § 245(a)(1) (West 2013).

No elements of criminal threats under Cal. Penal Code § 422 are similar to assault or felonious assault under Cal. Penal Code § 245(a)(1). The statute investigated in this case involves threatening to commit a crime which will result in death or bodily injury to another in such a way that conveys sufficient gravity that the person reasonably fears for their own or their family's safety, but does not require that an injury or assault actually occur. Felonious assault involves assaulting another with a deadly weapon or an instrument other than a firearm. Assault involves an unlawful attempt, coupled with a present ability, to commit a violent injury against someone. Counsel himself admits that Cal. Penal Code § 422 lacks the requirement of a present ability to commit an injury. We recognize that qualifying criminal 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 certifying official did not indicate that his office or any other law enforcement authority investigated the perpetrator for any crime other than criminal threats.

On appeal, counsel claims that the facts of what occurred to the petitioner are like those of, or might be charged in conjunction with, an attempted felonious assault. 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 criminal statutes 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 he was a victim, criminal threats, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault or attempted felonious assault. The petitioner is, therefore, not the victim of a qualifying crime or any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

The Petitioner Does Not Meet Any of the Eligibility Criteria

The petitioner's failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the petitioner was helpful in the investigation or prosecution of any *qualifying* criminal activity. Accordingly, the petitioner's Form I-918 Supplement B does not meet the requirements under section 214(p)(1) of the Act, and the petition may not be approved for this additional reason.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.