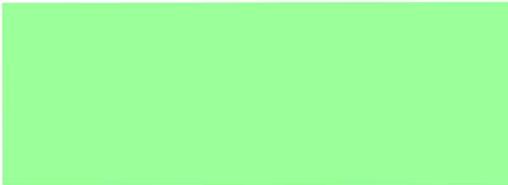


(b)(6)

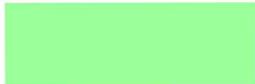
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

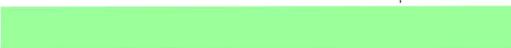


U.S. Citizenship  
and Immigration  
Services



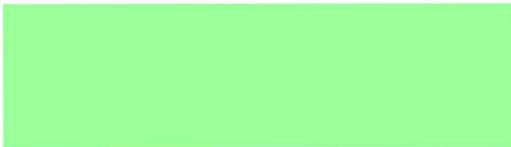
DATE: **MAR 28 2013** Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity. The director determined that the petitioner did not establish that she was the victim of a qualifying crime. The petition was denied accordingly. On appeal, counsel submits a statement on the Form I-290B Notice of Appeal and copies of documents already included in the record.

*Applicable Law*

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

- (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[.]

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

“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.

\* \* \*

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(2) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

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 without inspection on January 1, 1995. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on June 6, 2011. The director determined that the petitioner did not establish that she was a victim of qualifying criminal activity and issued a Request for Evidence (RFE) to which the petitioner through counsel responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition accordingly and the petitioner through counsel timely appealed.

On appeal, counsel maintains that the petitioner was the victim of the crimes of “hit-and-run” and “filing a false police report.” Counsel states that these crimes are similar to the qualifying crimes of felonious assault and obstruction of justice.

*Claimed Criminal Activity*

In her personal statement, the petitioner recalled that on August 21, 2010, she and her two daughters were involved in a car accident when D-W<sup>1</sup> hit their car while they were stopped at a red light with such force as to cause their car to collide with the two cars in front of them. The petitioner also learned that when the police questioned D-W about the car-accident, he falsely claimed that someone had stolen his car to avoid responsibility for the hit-and-run accident. As a result of the car accident, the petitioner injured her hand which required emergency medical treatment, including eight stitches and two to three weeks to heal. The petitioner also stated that she suffered from anxiety and fear after the accident.

In support of her 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 Senior Deputy District Attorney [REDACTED] of the Alameda County, California District Attorney’s Office (certifying official). The certifying official listed the criminal acts of which the petitioner was a victim of at Part 3.1 as “Hit and run.” At Part 3.3, the certifying official listed the statutory citation of the crime investigated or prosecuted as California Vehicle Code (CVC) section 20002(a) and specified that the crime was a misdemeanor. At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner was seated in her car when struck by the car of the perpetrator. According to the certifying official, the accident caused injuries to the petitioner and later the perpetrator falsely claimed that his vehicle had been stolen to escape responsibility. Regarding any known injuries to the petitioner, the certifying official reported at Part 3.6 that the petitioner had suffered a laceration to her left hand which was swollen and treated with bandages and ice at the scene of the accident.

*Analysis*

The Petitioner is Not a Victim of Qualifying Criminal Activity

On appeal, counsel for the petitioner asserts that the perpetrator committed the offense of falsely reporting a crime when he stated to a police officer that his automobile was stolen to escape responsibility for the hit-and-run accident of which the petitioner was a victim and that this violated California Penal Code (CPC) § 148.5(a). Counsel further asserts that this offense is substantially similar to the qualifying crime of obstruction of justice because the perpetrator harmed the petitioner in a hit-and-run accident and sought to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him to justice by making a false report.

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<sup>1</sup> Name withheld to protect the individual’s identity.

Under California law, a “False report of criminal offense” occurs upon violation of the following:

- (a) Every person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, the Attorney General, or a deputy attorney general, or a district attorney, or a deputy district attorney that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor.

Cal. Penal Code § 148.5 (West 2013).

The record does not establish that the petitioner was the victim of falsely reporting a criminal offense or obstruction of justice. The certifying official did not indicate that the petitioner was the victim of CPC § 148.5(a) or obstruction of justice at Part 3.1 of Form I-918 Supplement B. The certifying official also did not list any section of California’s Penal Code relating to falsely reporting a criminal offense or obstruction of justice at Part 3.3, which requires the certifying official to provide the statutory citations of the crime(s) investigated or prosecuted. There is only one statutory citation listed on the Form I-918 Supplement B as the crime that was investigated or prosecuted, which is California Vehicle Code (CVC) §§ 20002(a) related to hit-and-run accidents. At Part 3.5, the certifying official mentions that the perpetrator attempted to falsely allege that a drug addict stole his vehicle when confronted by the police about the hit-and-run accident. The certifying official does not indicate on the Form I-918 Supplement B whether her office, the California State Police, or any other law enforcement entity investigated or prosecuted the perpetrator for falsely reporting a criminal offense. Even if CPC § 148.5(a) had been investigated, the petitioner would not have been a victim of that crime and it is not substantially similar to the qualifying crime of obstruction of justice.

On appeal, counsel for the petitioner asserts that an offense under CVC § 20002(a) is substantially similar to felonious assault as found at California Penal Code (CPC) § 245.<sup>2</sup>

Under California law, a hit-and-run accident occurs upon violation of the following:

- (a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists[.]

Cal. Veh. Code § 20002(a) (West 2013).

The particular crime that was certified 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

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<sup>2</sup> On appeal, counsel asserts that an offense under CVC § 20003 is substantially similar to felonious assault as found at California Penal Code (CPC) § 245. However, the record does not include evidence from any law enforcement or certifying officials regarding the perpetrator violating CVC § 20003 and for this reason, we do not address it in this opinion.

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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 California law, assault is defined as:

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Cal. Penal Code § 240 (West 2013).

Under California law, felonious assault is described as follows, in pertinent part:

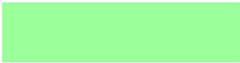
(a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars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

Cal. Penal Code § 245 (West 2013).

Counsel has not established that the petitioner was the victim of felonious assault or any other qualifying crime. The nature and statutory elements of hit-and-run under CVC § 20002(a) are not substantially similar to felonious assault under CPC § 245(a)(1). Under CPC § 245(a)(1), felonious assault requires an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another with the intent to harm another with a weapon. In contrast, the offense of hit-and-run at CVC § 20002(a) is a liability crime requiring no specific intent of the perpetrator to cause the harm inflicted.

Counsel cites decisions by California courts, which equate being struck by a vehicle to being assaulted by a deadly weapon. Counsel fails, however, to engage in the requisite statutory analysis to show that the certified crimes in this case are substantially similar to felonious assault or any other qualifying crime.

Even if counsel had shown that the certified crime in this case were substantially similar to the qualifying crime of felonious assault, the record contains no evidence that the Oakland Police department ever investigated or prosecuted that qualifying crime, as required by sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act and the regulations at 8 C.F.R. §§ 214.14(b)(3), (c)(2)(i). Here, as noted above, the record contains no evidence that the certifying agency investigated the perpetrator for felonious assault. The relevant evidence also contains no indication that the certifying agency intends to investigate or prosecute the driver of the vehicle for felonious assault or other qualifying crimes. The petitioner in this matter, therefore, does not meet the definition of victim of qualifying criminal activity at 8 C.F.R. § 214.14(a)(14) for having been the victim of a hit-and-run



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accident.

*Conclusion*

Although the petitioner was injured by her involvement in a hit-and-run automobile accident, the petitioner has not demonstrated that the offense of which she was a victim constituted qualifying criminal activity, as required by section 101(a)(15)(U)(iii) of the Act. Her failure to establish that she was the victim of qualifying criminal activity also prevents her from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act

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). Here, that burden has not been met.

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