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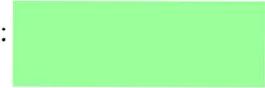
U.S. Citizenship
and Immigration
Services



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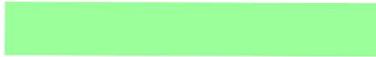
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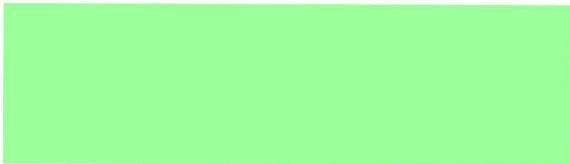
Petitioner:



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:



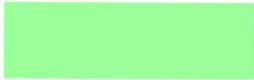
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 pursuant to 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 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 director further found that the petitioner did not establish that he was helpful in the investigation or prosecution of qualifying criminal activity because he did not continue to be helpful after he reported the crime. 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);

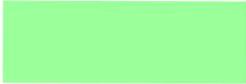
(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting 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 defines qualifying criminal activity as, in pertinent part:

(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[.]

“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) provides the following pertinent definitions:

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: . . . felonious assault; . . . 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.

* * *

(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.

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[es] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

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 entered the United States on March 2, 2000, without inspection, admission or parole. The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on November 4, 2011. On May 17, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of a qualifying crime, that he had suffered substantial abuse as a result of qualifying criminal activity, and that he had been helpful in the prosecution or investigation of the qualifying criminal activity. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The petition was denied accordingly.

On appeal, counsel contends that the petitioner is eligible for U nonimmigrant classification because he was the victim of battery, which she claims is equivalent to the qualifying crime of felonious assault,

and that the petitioner possessed information and was helpful to the investigation of the battery because he filed a police report.

Claimed Criminal Activity

According to the petitioner in his affidavit dated October 28, 2011, on March 27, 2010, the petitioner got into a confrontation with his neighbor and his neighbor's wife over his turned rear-view mirror. While he was arguing with the wife, his neighbor hit him with a metal pipe from behind. The petitioner escaped into his car and drove away. The petitioner's neighbor then threw a stick at the petitioner's vehicle. Before going to work, the petitioner went to the police station and filed a report.

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] California, Police Department (certifying official). The certifying official listed the criminal act of which the petitioner was a victim at Part 3.1 as felonious assault. At Part 3.3, however, the certifying official listed the statutory citation of the crime investigated or prosecuted as California Penal Code (Cal. Penal Code) section 242 (battery). At Part 3.5, which provides for a brief description of the criminal activity, the certifying official stated that the petitioner was repeatedly struck with a metal pipe. Regarding any known injuries to the petitioner, the certifying official indicated at Part 3.6 that the petitioner suffered minor injuries and continues to suffer emotionally.

Analysis

Battery is not a Qualifying Criminal Activity

Counsel's claims on appeal fail to establish that the petitioner was the victim of a qualifying crime.

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 certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of felonious assault, the preponderance of the evidence shows the petitioner was the victim of battery, not felonious assault. The certifying official did not list a statutory citation for felonious assault as criminal activity that was investigated or prosecuted; he only cited battery. The police report stated that the petitioner "was the victim of battery" and noted that the crime was "simple, not aggravated assault."

The record also does not show that the battery offense in this case is substantially similar to felonious assault or any other qualifying crime. 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.

Counsel contends battery “rises to the level of” felonious assault because assault is an attempt to cause injury through the use of force or violence, and battery requires actual violence to be used as opposed to an attempt. Under the California Penal Code, battery is defined as “any willful and unlawful use of force or violence upon the person of another.” Cal. Penal Code § 242 (West 2013). For an assault to rise to the level of a felony under California law, it must involve caustic chemicals or flammable substances (Cal. Penal Code § 244), a deadly weapon or force likely to produce bodily injury (Cal. Penal Code § 245), or some other aggravating factor (Cal. Penal Code § 244.5 – 245.5).

The elements of battery under Cal. Penal Code § 242 are not similar to felonious assault under Cal. Penal Code § 244.5-245.5. Battery under California law involves the use of force or violence against another. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another, as well as an aggravating factor such as those listed above. While both battery and assault involve violence, a felonious assault also contains elements such as the use of a deadly weapon or force likely to produce bodily injury, which are not included in the definitions of battery or simple assault. 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 battery or simple assault.

On appeal, counsel claims that battery is “more than” an assault and therefore rises to the level of felonious assault pursuant to 8 C.F.R. 214.14(a)(9) because battery carries a heavier possible sentence than simple assault under the California Penal Code. *See* Petitioner’s Brief on Appeal at 3. However, the proper inquiry is not merely an analysis of the severity of sentencing, but a comparison of the nature and elements of the offense committed against the petitioner and the qualifying crimes at section 101(a)(15)(U)(iii) of the Act. *See* 8 C.F.R. § 214.14(a)(9). As counsel herself notes, there is a “stark contrast” between battery and assault. *See* Petitioner’s Brief on Appeal at 2. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, battery or simple assault, 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 record in this case shows that the petitioner was the victim of battery, which is not a qualifying crime or substantially similar to any qualifying criminal activity. Although the certifying official indicated that the petitioner was the victim of felonious assault, a U nonimmigrant status certification must also state that the petitioner has been the victim of qualifying criminal activity that the certifying agency is investigating or prosecuting. 8 § C.F.R. 214.14(c)(2)(i). In this case, the certifying official stated that the only crime investigated or prosecuted was battery, which is not substantially similar to felonious assault or any other qualifying crime. The police report also does not indicate that a felonious assault was investigated or prosecuted, and there is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. Consequently, the petitioner has not established that he was the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i)(I) of the Act, as defined in section 101(a)(15)(U)(iii) of the Act and as prescribed by the regulation at 8 C.F.R. § 214.14(a)(9).

The Petitioner Does Not Meet Any of the Eligibility Criteria

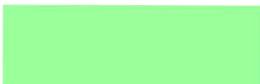
The petitioner's failure to establish that he was the victim of qualifying criminal activity prevents him from meeting the other statutory requirements for U nonimmigrant classification at subsections 101(a)(15)(U)(i)(I) – (IV) of the Act. In this case, the certifying official did not indicate that the 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.

The Petitioner has not Established his Continuing Helpfulness to Law Enforcement Authorities

Because the petitioner has not established that he was the victim of qualifying criminal activity, he has also failed to demonstrate that he has been helpful to law enforcement in the prosecution or investigation of such activity. Even if his victimization was established, however, the record does not show that he was helpful to law enforcement in the prosecution or investigation of the criminal activity.

The regulation at 8 C.F.R. § 214.14(b)(4) governs the evidentiary standards and burden of proof for I-918 U petition filings and, in part, provides USCIS with the discretion to determine the evidentiary value of submitted evidence, including a Form I-918 Supplement B. The petitioner has not complied with the regulation at 8 C.F.R. § 214.14(b)(3) which requires the petitioner to show that "since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested." In the police report, [REDACTED] stated that the petitioner did not wish for her to contact the perpetrator and that no complaint was sought. She noted that the petitioner "only wished this incident documented as he feared [the perpetrator] may return to the home and cause some type of damage. [The petitioner] did not wish charges filed against [the perpetrator] and did not wish for me to contact him..." In a letter dated June 8, 2011, [REDACTED] Victim Advocate for the [REDACTED] District Attorney's Office Victim Center, stated that the petitioner was "considered uncooperative. . . because he did not wish to continue with criminal proceedings against" the perpetrator. She also noted that his claim under the Victim Compensation and Government Claim's Board was denied on this same basis.

We acknowledge the fear that the petitioner may have faced when deciding whether to provide assistance to the police with an investigation or prosecution of his neighbor. Nevertheless, the regulations require the petitioner to show that "since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3); *Supplementary Information*, 72 Fed. Reg. at 53019 ("excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested"). The record contains no evidence that the police department's requests were unreasonable. The regulation provides an exception to the helpfulness requirement only for victims under the age of 16 or victims unable to assist in the investigation or prosecution because they are incapacitated or incompetent. 8 C.F.R. § 214.14(b)(3). The record contains no indication that either of these exceptions exist in this case.



In order to be eligible for U nonimmigrant status, the petitioner's helpfulness to law enforcement must be ongoing. Here, the petitioner did not provide ongoing help to law enforcement when he declined to press charges and indicated that he did not want the police to contact him or the perpetrator regarding the incident. Consequently, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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. The petition remains denied.