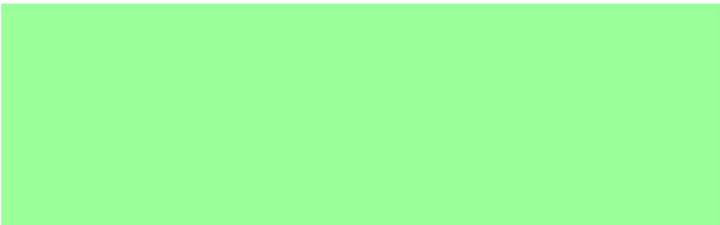


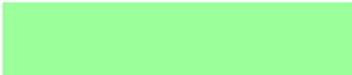
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

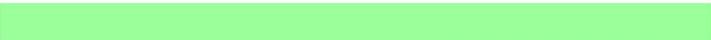


U.S. Citizenship  
and Immigration  
Services

(b)(6)

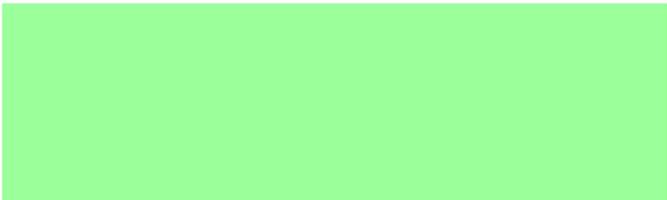


Date: **MAR 18 2014** Office: VERMONT SERVICE CENTER 

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:

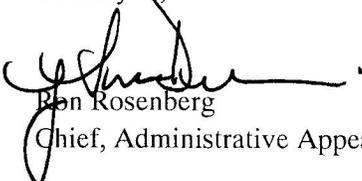


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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 denied the petition because the petitioner did not establish that he was the victim of qualifying criminal activity or that he had suffered substantial physical or mental abuse as the result of the qualifying criminal activity. On appeal, counsel submits a brief, additional evidence, and copies of documents already included in the record.

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

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; . . . obstruction of justice . . . . 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.

\*\*\*

(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 of more of these offenses, if:

(A) The petitioner has been directly or 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 term "[p]hysical or mental abuse means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." 8 C.F.R. § 214.14(a)(8). In order to determine whether the abuse suffered rises to the level of substantial physical or mental abuse, United States Citizenship and Immigration Services (USCIS) will assess 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[.]

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 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."

### *Facts and Procedural History*

The petitioner is a native and citizen of Guatemala who last entered the United States on February 14, 1998 without admission, inspection or parole. The petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on January 12, 2012. On the same day, the petitioner filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), for his ground of inadmissibility. On October 30, 2012, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity, that he continued to assist in the investigation or prosecution of the criminal activity, and that he suffered substantial physical and mental abuse. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition and the Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the petitioner is the victim of a qualifying crime based on the facts of the case. She acknowledges that the petitioner's attacker was charged with battery, but he could have been charged with aggravated assault which is similar to felonious assault. She reports that the petitioner was punched in the face and suffered facial injuries, he lost consciousness, and he still fears his attacker, which amounts to substantial physical and mental abuse.

### *Claimed Criminal Activity*

In his affidavit, the petitioner recounted that on July 30, 2005, as he was walking into an apartment building, he was punched on the side of his head and lost consciousness. When he regained consciousness, he was in his apartment but does not remember how he got there. He called the police and when the police questioned his attacker, he denied that he was the attacker by providing a fake name. The police brought the petitioner's attacker to the petitioner, and based on the petitioner's identification, they arrested him. The petitioner went to the hospital because of his facial injuries but they determined that he did not have a serious head injury. He stayed home from work the next day and it took about a week and a half to recover.

The Form I-918 Supplement B was signed by [REDACTED] Department (certifying official), on December 9, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as obstruction of justice and battery. In Part 3.3, the certifying official refers to 720 Illinois Compiled Statutes (ILCS) 5/12-3 and 5/31-4, battery and obstruction of justice, respectively, as the criminal activities that were investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that the while standing at the front door of the apartment, the petitioner was punched in the face by the defendant. The “[d]efendant then jumped on top of [the petitioner] and continued to punch [him]. Defendant later denied who he was when he was given his name.” At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner had “facial abrasions and swelling of the face.”

### *Analysis*

#### The Petitioner was Not a Victim of Obstruction of Justice

Obstruction of justice under 720 Illinois Compiled Statutes 5/31-4 occurs when:

- (a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:
- (1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information; or
  - (2) Induces a witness having knowledge material to the subject at issue to leave the State or conceal himself or herself; or
  - (3) Possessing knowledge material to the subject at issue, he or she leaves the State or conceals himself; . . .

720 Ill. Comp. Stat. 5/31-4 (West 2013).

Although obstruction of justice is a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act, the petitioner must demonstrate that his attacker committed obstruction of justice, at least in principal part, as means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring the perpetrator to justice for other criminal activity; or (2) to further its abuse or exploitation of or undue control over the petitioner through manipulation of the legal system. 8 C.F.R. § 214.14(a)(14)(ii). The certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was the victim of obstruction of justice; however, he presented no evidence that he or any other law enforcement entity investigated obstruction of justice where the petitioner was the victim. In addition, as noted in her denial decision, the director concluded that the obstruction of justice charge against the petitioner’s attacker was a result of the attacker refusing to give his correct name during his arrest and not as a result of anything the attacker did to or threatened to do to the petitioner to obstruct justice. Further, counsel does not dispute the director’s

conclusion that the petitioner is not a victim of obstruction of justice. The petitioner is, therefore, not the victim of the qualifying crime of obstruction of justice.

Battery under Illinois Law is Not Substantially Similar to a Qualifying Crime or Criminal Activity

Incident Report and court records from the Circuit Court of the indicate that the suspect was charged and convicted of violating 720 ILCS 5/12-3 (battery) against the petitioner. The crime of battery 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 battery 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.

Under Illinois Compiled Statutes, “[a] person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 Ill. Comp. Stat. 5/12-3(a) (West 2013). In addition, battery under Illinois law is a misdemeanor. *See* 720 Ill. Comp. Stat. 5/12-3(b) (West 2013). Assault under Illinois law is when a person “without lawful authority . . . knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 Ill. Comp. Stat. 5/12-1 (West 2013). Aggravated assault occurs when a person uses, threatens to use, or brandishes a weapon or firearm, or if the assault is on a selected class of person, such as a law enforcement officer or elderly person. *See* 720 Ill. Comp. Stat. 5/12-2 (West 2013).

No elements of battery under 720 Illinois Compiled Statutes 5/12-3(a) are similar to assault under 720 Illinois Compiled Statutes 5/12-1 and 5/12-2. The statute investigated in this case involves causing bodily harm to an individual or making physical contact of an insulting or provoking nature with an individual, and does not specify using a weapon or firearm while committing the 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. The certifying official did not indicate on the Form I-918 Supplement that the petitioner was a victim of felonious assault or that he or any other law enforcement entity investigated felonious assault. The only crimes certified at Part 3.3 of the Form I-918 Supplement B were battery and obstruction of justice. In addition, the battery offense investigated is a misdemeanor. There is no evidence that the certifying agency investigated or prosecuted an attempted or actual felonious assault. The petitioner has not shown that any crimes other than battery and obstruction of justice were investigated by the law enforcement agency.

On appeal, counsel argues that “the elements of [the petitioner’s] attack are substantially similar to elements of qualifying crimes under the Illinois Criminal Statute.” She claims that “the criminal activity is not merely defined by what the assailant was ultimately charged with, but by what occurred during the incident.” 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 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, battery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act, including felonious assault.

Here, the evidence in the record and counsel's contentions fail to establish that the criminal offense of which the petitioner was a victim, battery, is substantially similar to 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 a any qualifying criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

Substantial Physical or Mental Abuse

As the petitioner did not establish that he was the victim of qualifying criminal activity, he has also failed to establish 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. Even if the petitioner could establish that he was the victim of qualifying criminal activity, he has not demonstrated that he suffered substantial physical or mental abuse as a result of his victimization. When assessing whether a petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity, USCIS looks at, among other issues, 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. 8 C.F.R. § 214.14(b)(1).

According to the Form I-918 Supplement B, the petitioner suffered "facial abrasions and swelling of the face" as a result of being punched by his attacker. In his affidavit, the petitioner states that after being punched by his attacker on the side of his head, he lost consciousness, and when he regained consciousness, he was bleeding from scratches and cuts on his face. He went to the hospital but was released after they determined he did not have a serious head injury. He claims that it took about a week and a half to recover from his injuries, but since the attack, his "life has not been in the same." He is afraid of his attacker and his attacker's girlfriend who continue to threaten him, he has nightmares, and is considering moving so his attacker cannot find him. Counsel states the petitioner suffered substantial physical and mental abuse because of his injuries and his continuing fear of his attacker.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the battery. The record shows that the petitioner suffered abrasions and swelling on his face after being punched and he describes himself as being afraid of his attacker; however, the petitioner fails to probatively discuss any permanent or serious harm the incident caused to his appearance, health, or physical or mental soundness. While we do not minimize the petitioner's victimization, the preponderance of the relevant evidence does not establish that he suffered substantial physical or mental abuse as a result under the standard and criteria prescribed by the regulation at 8 C.F.R. § 214.14(b)(1). Accordingly, the petitioner has not satisfied subsection 101(a)(15)(U)(i)(I) of the Act.

*Conclusion*

The petitioner has not established that he was the victim of any qualifying criminal activity or that, even if he could establish such victimization, he suffered substantial physical or mental abuse under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1). The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

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. Accordingly, the appeal will be dismissed.

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