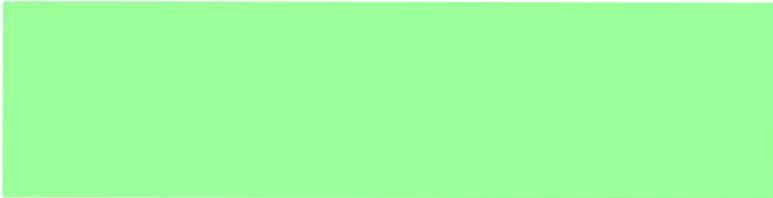


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

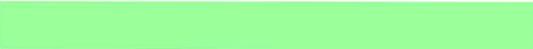


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 24 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:

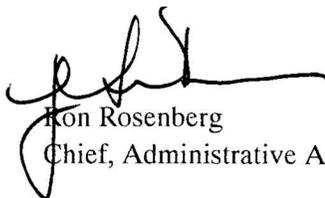


INSTRUCTIONS:

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 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 she was the victim of qualifying criminal activity and she consequently did not meet any of the requirements for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act. On appeal, counsel submits a brief 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; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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.

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 [U.S. Citizenship and Immigration Services (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 entered the United States on June 5, 1993 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 June 1, 2011. On February 7, 2012, the director issued a Request for Evidence (RFE) that the petitioner is a victim of qualifying criminal activity. In addition, the director noted that the petitioner may be inadmissible to the United States and requested that she submit a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) to waive her grounds of inadmissibility and a copy of her passport. Counsel responded to the RFE with additional statements and evidence. On September 10, 2012, the director issued another RFE to demonstrate that the crime listed on the Form I-918 Supplement B would be considered a qualifying crime and that she had suffered substantial physical or mental abuse. Counsel responded to the RFE with additional statements and evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition and the petitioner's Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel claims that the director improperly denied the petitioner's Form I-918 U petition because she is the victim of a qualifying crime, felonious assault.

Claimed Criminal Activity

In her declarations, the petitioner recounted that on July 10, 2010, a man took her purse from her. She stated that while she was walking to the market to buy groceries, a man with a hood pulled her purse off her arm. When she attempted to get her purse back, she fell to the ground in the middle of the crosswalk, injuring her shoulder and neck. She was screaming and crying. She walked home and told her neighbors and daughters what happened but did not report the incident until August 18, 2010 because of her undocumented status.

The Form I-918 Supplement B that the petitioner submitted was signed by Supervisory Detective Javier Lozano, 77th Street Station, Los Angeles, California Police Department (certifying official), on May 2, 2011. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as robbery, and in Part 3.3, he refers to California Penal Code (CPC) § 211, robbery, as the criminal activity that was 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 suspect grabbed the petitioner's purse as she was walking, and when she tried to hold on, she "fell to the ground really hard. The suspect fled the location with the [petitioner's] purse." At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official stated the petitioner "fell hard in the street and injured her shoulder, arm and neck," she went to the clinic a month after the incident because of the pain, and she is "very anxious" and has nightmares.

Robbery under California Law is not a Qualifying Crime or Criminal Activity

The Investigative Report from the Los Angeles Police Department indicates that robbery was investigated. 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. On appeal, counsel claims that robbery is substantially similar to assault and/or assault with a deadly weapon under California law.

Under the California Penal Code (CPC), “[r]obbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211 (West 2013). California law defines assault “as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Cal. Penal Code § 240 (West 2013). Assault with a deadly weapon or force likely to produce great bodily injury is defined as, 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).

No elements of robbery under Cal. Penal Code § 211 are similar to assault under Cal. Penal Code §§ 240 or 245. The statute investigated in this case involves taking personal property from an individual through the use of force or fear, and does not specify the commission of a violent injury as a necessary component. Felonious assault, however, involves an attempt, with a present ability, to commit violent injury upon another with a deadly weapon. 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 does not indicate that felonious assault or any qualifying crime was investigated along with the robbery; there is no evidence that he or any other law enforcement entity investigated a qualifying crime, and he only describes at Part 3.5 the suspect grabbing the petitioner’s purse and her falling down on the ground when recounting the criminal activity that was investigated or prosecuted. The only crime certified at Part 3.3 of the Form I-918 Supplement B was robbery, and the investigative report noted that the crime was CPC § 211 (robbery). There is no evidence that the certifying agency investigated an attempted or actual felonious assault or any other qualifying crime. The petitioner has not shown that any crime other than robbery was investigated by the law enforcement agency.

On appeal, counsel argues that robbery, in violation of CPC § 211, is similar to felonious assault because both robbery and assault are “violent crimes against a person” and “require an element of ‘fear.’” She claims robbery has the element of fear of immediate injury while assault “includes the ability to commit a violent injury,” and they both have an element of victimization. However, fear is not an element of assault under CPC § 240 and injury is not an element of robbery under CPC § 211. While robbery and assault are crimes against a person under California law, that factor alone does not make them “substantially similar.”

Counsel notes that the “violent act of throwing [the petitioner] to the ground derived from the robbery itself” and, therefore, assault with a deadly weapon is included in the crime of robbery. She claims that the petitioner suffered violent physical injuries to her neck, shoulder and arm when she was pulled down to the ground, and she is suffering psychological trauma. 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 she was a victim, 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.

Here, the evidence in the record and counsel’s contentions fail to establish that the criminal offense of which the petitioner was a victim, robbery, 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 qualifying crime or 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 she was the victim of criminal activity, she has also failed to establish 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. Even if the petitioner could establish that she was the victim of qualifying criminal activity, she has not demonstrated that she suffered substantial physical or mental abuse as a result of her 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 injured her shoulder, arm, and neck when she fell to the ground, and she is anxious and has nightmares. In her declarations, the petitioner states that as a result of the robbery, she suffers extreme anxiety whenever she leaves the house, she has chronic pain in her shoulder and neck, she has difficulty sleeping, she has nightmares, and she is depressed. She notes that she is receiving therapy and it has helped but she is unsure if she will ever “overcome the trauma.” In her statements dated February 1, 2012, therapist *Ann Marie G. [redacted]* diagnoses the petitioner was post-traumatic stress disorder (PTSD) and major depressive disorder. She states the petitioner has received some

relief as a result of therapy but “her symptoms remain debilitating.” In addition, [REDACTED] indicates that according to the petitioner, she was attacked by two women in Guatemala and her husband was murdered leaving her alone to care for several small children. [REDACTED] notes that the petitioner “did not achieve a full resolution of these prior traumas” and they continue to affect her.

The preponderance of the relevant evidence fails to establish that the petitioner has suffered substantial physical or mental abuse as a result of the crime committed against her. Although [REDACTED] indicates that the petitioner is suffering from PTSD and major depression, she also notes that the petitioner continues to suffer from prior traumas, including the murder of her husband and being attacked by two women in Guatemala. [REDACTED] and the petitioner fail to probatively discuss any permanent or serious harm the incident caused to the petitioner’s appearance, health, or physical or mental soundness. While we do not minimize what the petitioner experienced as a victim of a robbery, the preponderance of the relevant evidence does not establish that she 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.

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 failed to establish that she possesses information concerning such a crime or activity, as required by subsection 101(a)(15)(U)(i)(II) of the Act.

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 failed to establish 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.

Jurisdiction

As the petitioner did not establish that she was the victim of qualifying criminal activity, she has also failed to establish that 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, as required by subsection 101(a)(15)(U)(i)(IV) of the Act.

Conclusion

Although the petitioner was helpful to the Los Angeles, California Police Department in the investigation of the robbery against her, she has not demonstrated that the offense of robbery under CPC § 211 is a qualifying crime or substantially similar to any other qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U

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NON-PRECEDENT DECISION

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nonimmigrant classification. The petitioner's failure to establish that the offense of which she was the victim is a qualifying criminal activity prevents her from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

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.