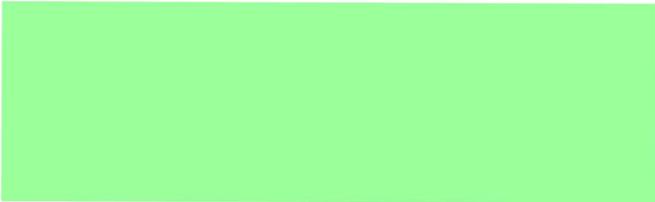


(b)(6)

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



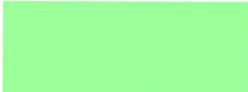
U.S. Citizenship
and Immigration
Services



Date:

Office: VERMONT SERVICE CENTER

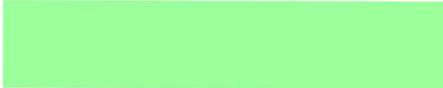
FILE:



JAN 30 2015

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 Acting 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 failed to establish that he had suffered substantial physical or mental abuse as a result of his victimization. On appeal, the petitioner 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: 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 foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

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As used in section 101(a)(15)(U)(i)(I) of the Act, the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as “injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”

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[.]

* * *

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 Poland who entered the United States on October 18, 1997, on a B-2 nonimmigrant visa, with authorization to remain in the United States for a period not to exceed six months. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on December 14, 2012. On October 29, 2013, the director issued a Request for Evidence (RFE) that the petitioner was the victim of qualifying criminal activity, that he suffered resultant substantial physical or mental abuse, and that he was

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helpful to law enforcement. The director also requested that the petitioner file an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) for his ground of inadmissibility. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the Form I-918 U petition. The petitioner timely appealed the denial of the Form I-918 U petition. The petitioner states on appeal that he has suffered substantial physical or mental abuse as a result of being the victim of qualifying criminal activity.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the petitioner's Form I-918 U petition.

The Form I-918 Supplement B that the petitioner submitted was signed by Chief [REDACTED] Wisconsin, Police Department (certifying official), on October 19, 2012. The certifying official listed the criminal activity of which the petitioner was a victim at Part 3.1 as burglary. The certifying official did not indicate a statutory citation for the criminal activity that was investigated or prosecuted; however, at Part 3.5, when asked to briefly describe the criminal activity being investigated or prosecuted, he stated that on March [REDACTED] the petitioner was threatened by two individuals with a baseball bat at his place of employment. The suspects "attempted, unsuccessfully, to open cash registers." At Part 3.6, the certifying official indicated that there was no known or documented injury to the petitioner.

In his statement submitted on appeal, the petitioner recounted that during the evening of September [REDACTED] he was washing the floors at his place of employment, when he heard glass shatter. As he approached the broken glass, he saw two masked figures in the store. One of the suspects ran up to the petitioner waving a baseball bat and then he removed a gun from his pocket and put it to the petitioner's head.¹ The other suspect was attempting to open the cash registers. Eventually the suspects fled and the petitioner went to the back of the store to tell his co-worker what happened. Because the petitioner and his co-worker did not speak English, they called a friend who called the police. About 30 minutes later, the police arrived and the petitioner gave a statement. The petitioner claims that after this incident, he had difficulty sleeping, high blood pressure, and he eventually left his job because he "was having flashbacks of that night." He moved to another state and about a year after the incident, he attempted suicide because he was "having a hard time with life all together," but his wife helped him recover. The petitioner indicated that he still has nightmares.

In a psychological evaluation dated December 27, 2013, Dr. [REDACTED] states that according to the petitioner, he has increased anxiety over the robbery that occurred in [REDACTED] when he and his friend were held at gunpoint, he was thrown against the floor, a gun was put to the back of his head, and he "was shaking all night after he had left the police station." According to the petitioner, since the incident, he is "socially withdrawn," does not attend events, avoids crowds, he cannot work at night, he has nightmares, and he attempted suicide but never went to the hospital. Dr. [REDACTED] diagnosed the petitioner with Post-Traumatic Stress Disorder (PTSD) and indicates that the PTSD is related to the armed robbery. She indicates that the petitioner's prognosis is good if he receives therapy and psychiatric care. In a letter dated December 12,

¹ We note that the [REDACTED] Police Department Incident Report dated March [REDACTED] does not indicate that the petitioner was held at gun point and the only weapon used in the crime was a baseball bat.

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2013, Dr. [REDACTED] states the petitioner suffers from PTSD triggered by the burglary “in which he was taken at gunpoint while working as a janitor,” and he “has suffered with depression and anxiety consequently contributing to the deterioration of his general health.”

Factors relevant to a determination of substantial abuse include the severity and duration of the harm, and serious harm to the health or mental soundness of the victim, including aggravation of pre-existing conditions. *See* 8 C.F.R. § 214.14(b)(1). Although the evidence establishes that the petitioner has been diagnosed with PTSD and depression, the Form I-918 Supplement B, the incident report, statements from the petitioner, and the mental health documents fail to probatively discuss any permanent harm the incident caused to the petitioner’s appearance, health, or physical or mental soundness. The record does not show that the severity of the harm and duration of the infliction of harm are sufficient to establish substantial abuse. The petitioner’s statement submitted on appeal indicates that he suffered a traumatic experience when he was robbed by gunpoint in [REDACTED] and he still has nightmares, but he provided no further information in his statement regarding ongoing trauma, and his statement does not support the findings by Dr. [REDACTED] regarding the seriousness of his mental abuse. In addition, although the petitioner indicates that on September [REDACTED] he was held at gunpoint and thrown against the wall and floor during a robbery, the [REDACTED] Incident Report dated March [REDACTED] does not indicate that the suspects used a gun during the robbery or threw the petitioner against the wall and floor, and there is no explanation in the record on why the incident report does not include this information. Moreover, although Dr. [REDACTED] diagnosed the petitioner with PTSD, she also indicates that the petitioner’s wife “has many health problems,” they have “a lot of financial problems and their immigration status is not clear and [they are] afraid of deportation.” She also notes that the petitioner’s prognosis is good. While Dr. [REDACTED] confirms the petitioner’s PTSD, she does not indicate that the petitioner’s Type 2 diabetes or hypertension are as a result of his victimization, nor does she explain how his health has deteriorated. While we do not minimize the petitioner’s victimization, the overall evidence does not establish that he has suffered resultant substantial physical or mental abuse. Under the relevant factors described at 8 C.F.R. § 214.14(b)(1), the evidence in the record does not demonstrate that the petitioner suffered substantial abuse, as required by section 101(a)(15)(U)(i)(I) of the Act.

Qualifying Criminal Activity

Beyond the director’s decision, the record does not show that the petitioner was the victim of qualifying criminal activity.² The Form I-918 Supplement B and incident report from the [REDACTED] Police Department indicate that burglary was investigated. The crime of burglary 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 burglary 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

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

elements of the statutes in question. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, burglary, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

In response to the RFE, the petitioner asserted that the crime committed against him was similar to felonious “armed robbery” under Wisconsin law and that, based on the facts of the case, because the perpetrator threatened the petitioner with imminent use of force, a felonious assault occurred.³ However, the certifying official did not indicate that armed robbery or felonious assault were investigated or prosecuted, and as stated above, the inquiry is not fact-based, but entails comparing the nature and elements of the statutes in question.

Although the certifying official did not provide a statutory citation for the criminal activity investigated or prosecuted on the Form I-918 Supplement B, burglary is defined in the Wisconsin Criminal Code as:

(1m) Whoever intentionally enters any of the [enumerated places] without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony...

Wis. Stat. Ann. § 943.10 (West).

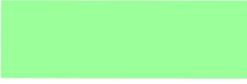
Under the Model Penal Code, “[a] person is guilty of aggravated assault if he: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.” Model Penal Code § 211.1(2) (West 2014).⁴

No elements of burglary under Wis. Stat. Ann. § 943.10 are similar to felonious assault under the Model Penal Code. The statute investigated in this case involves entering a place with the intent to steal or commit a felony, and does not specify the commission of bodily injury to another person. Felonious assault, however, involves causing or attempting to cause bodily injury to another. Therefore, the offenses are not substantially similar.

We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that qualifying criminal activity was investigated or prosecuted. Here, the certifying official did not indicate that his office or any other law enforcement authority investigated or prosecuted a felonious assault or any similar crime. As such, the petitioner has not demonstrated that the criminal offense of which he was a victim, burglary, 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,

³ Armed robbery is not a qualifying criminal activity under the Act. See section 101(a)(15)(U)(iii) of the Act.

⁴ The Wisconsin Criminal Code does not define the crime of felonious assault, as assault is treated as battery. See generally Wis. Stat. Ann.; *State v. Crowley*, 143 Wis. 2d 324, 331, 422 N.W.2d 847, 850 (1988).


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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.

Inadmissibility

Additionally, the petitioner is inadmissible to the United States and did not submit a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant (Form I-192). Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The petitioner is inadmissible to the United States under section 212(a)(7)(B) of the Act because he has not shown that he is in possession of a valid nonimmigrant visa or border crossing identification card, and section 212(a)(9)(B)(i) of the Act because he has been unlawfully present in the United States for one year or more. Additionally, the petitioner may be inadmissible under section 212(a)(2)(A)(i) for having been convicted of a crime involving moral turpitude (CIMT). The record shows that the petitioner was convicted on or about December 8, 2011, of Domestic Battery under Ill. Comp. Stat. Ann. section 5/12-3.2, which may be a CIMT.⁵ The petitioner therefore cannot be granted U nonimmigrant status because he has not shown that the grounds of inadmissibility have been waived through the grant of a Form I-192.

Conclusion

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.

⁵ Although the petitioner successfully completed all the terms and requirements of a Domestic Violence Diversion Agreement, Section 101(a)(48) of the Act states that where adjudication of guilt has been withheld, when an alien enters a plea of guilty or has admitted sufficient facts to warrant a finding of guilt, and a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. Here, the applicant entered a plea of guilty and was ordered to pay fines. As such, the petitioner was convicted of domestic battery for immigration purposes under section 101(a)(48) of the Act.